A

Easy Vista Sdn Bhd v Tenaga Nasional Bhd

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02(NCvC)(W)-1212–07 OF 2019
MARY LIM, HAS ZANAH MEHAT AND NANTHA BALAN JJCA
12 JANUARY 2020

C *Tort — Trespass — Trespass to land — Erection of pylon cables on appellant's land — Appellant claimed there was continuing trespass by respondent — Whether First Schedule Notice valid — Whether compensation order null and void — Whether there was trespass by respondent — Electricity Supply Act 1990 s 11*

D

This was an appeal by the appellant against the decision of the learned judge of the High Court in dismissing the appellant's claim against the respondent after a full trial. The original registered owner of a land ('the land') was one Mr Lim Kong ('the deceased') and Mdm Chan Kwan Ying ('Mdm Chan') was the
E widow. At all material times, SIME Bank Bhd ('the bank') had granted banking facilities to the deceased and a legal charge was created over the land as security. On 27 June 2000, the banking facility and the security was taken over by Danaharta Managers Sdn Bhd ('Danaharta'). Following the demise of the deceased, letters of administration ('LA') for the estate of the deceased were
F granted. Mr Tan Keat Hing ('Mr Tan') and Mr Subas Rao a/l Appalanaaidu ('Mr Subas') were appointed as the administrators of the estate of the deceased. The land was not stated as the asset of the deceased in the list of assets as per the Schedule to the LA. As there was default in respect of the banking facility, Danaharta took recovery action and eventually auctioned off the land on
G 5 December 2002. The appellant was the successful bidder at the auction and became the registered owner of the land on 20 December 2005. Pursuant s 11(2) of the Electricity Supply Act 1990 ('the Act'), the respondent issued a notice of intention to enter and do work on land dated 5 November 2002 ('the First Schedule Notice') for the purposes of building the transmission line and
H served it on Mdm Chan. On 15 December 2017 the appellant filed the writ at the High Court where the appellant's case was that in 2005 the respondent entered the land and erected pylon cables and as such the respondent trespassed on the land and there was continuing trespass. The respondent contended that an assessment inquiry was held on 20 April 2004 whereupon the Pentadbir
I Tanah Daerah, Johor Bahru ('PTD') determined that a sum of RM165,87.81 ('the compensation sum') was payable as compensation by reason of the respondent's entry upon the land ('the compensation order'). The learned judge dismissed the appellant's claim holding that: (a) there was nothing irregular about service of the First Schedule Notice on Mdm Chan; (b) the

compensation order was invalid due to the omission of the land from the Schedule to the LA and due to the presence of Mr Subas at the hearing before the PTD; and (c) given that the appellant was aware of the presence of the respondent's pylon cable on the land since 2005 and asserted that the compensation sum should not be paid to Mr Subas but rather to the appellant and as the appellant was not seeking to impugn the compensation order, the respondent's initial entry upon the land was valid and lawful. Hence, this appeal.

Held, dismissing the appeal with costs of RM10,000:

(1) The First Schedule Notice that was served on Mdm Chan was in the circumstances valid and proper. The fact that Mdm Chan was not the administrator was not an invalidating factor. At the time when the First Schedule Notice was served, the appellant was not the registered owner of the land. As such, it was not for the appellant (as the subsequent purchaser) to raise any issue (12 years later) with regard to any purported infirmities or non-compliance in the First Schedule Notice. Since there were no objection by Mdm Chan or by the administrators of the estate of the deceased in relation to the First Schedule Notice, there was no question of the PTD holding any inquiry to hear any objections. The mere fact that the First Schedule Notice had stated that the objection hearing would be on a date 'to be fixed' was not of itself fatal, especially when all the attendant circumstances were considered. The circumstances were: (a) the absence of any objection from those who could (but did not) object; and (b) the unconditional participation by Mr Subas (on behalf of the estate of the deceased) at the inquiry, which clearly or implicitly established that there was no objection to the First Schedule Notice and/or to the respondent's exercise of their right under s 11(5) of the Act and the entry on the land and erection of pylons cables thereupon (see paras 126–127, 129, 136 & 139–140).

(2) The mere fact that the land was not listed in the Schedule to the LA, did not deprive Mr Subas, the lawful co-administrator of his locus standi to act on behalf of the estate. Therefore, the compensation order was not null and void (see paras 143–144).

(3) In any event, there was in fact no trespass on the land as the respondent's entry on the land and erection of the pylon cables was done in accordance with s 11 of the Act. The First Schedule Notice and the compensation order were both valid and binding on all parties, including the appellant as the subsequent purchaser of the land (see para 149).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan hakim Mahkamah Tinggi yang bijaksana dalam menolak tuntutan perayu terhadap responden setelah

perbicaraan penuh. Pemilik sebidang tanah ('tanah') yang asal adalah Encik Lim Kong ('si mati') dan Puan Chan Kwan Ying ('Mdm Chan') adalah balu. Pada setiap waktu material, SIME Bank Bhd ('bank') telah memberikan kemudahan perbankan kepada si mati dan cagaran dibuat atas tanah sebagai sekuriti. Pada 27 Jun 2000, kemudahan perbankan dan sekuriti diambil alih oleh Danaharta Managers Sdn Bhd ('Danaharta'). Setelah kematian si mati, surat pentadbiran ('LA') untuk harta pusaka si mati diberikan. Encik Tan Keat Hing ('Mr Tan') dan Encik Subas Rao a/l Appalanaaidu ('Mr Subas') dilantik sebagai pentadbir harta pusaka si mati. Tanah tersebut tidak dinyatakan sebagai aset si mati dalam senarai aset seperti dalam Jadual LA. Oleh kerana terdapatnya kegagalan berkaitan kemudahan perbankan, Danaharta mengambil tindakan pemulihan dan akhirnya melelong tanah tersebut pada 5 Disember 2002. Perayu adalah pembida yang berjaya dalam lelongan dan menjadi pemilik tanah berdaftar pada 20 Disember 2005. Menurut s 11(2) Akta Bekalan Elektrik 1990 ('Akta'), responden mengeluarkan notis cadangan memasuki dan membuat kerja di tanah bertarikh 5 November 2002 ('Notis Jadual Pertama') untuk tujuan membina talian transmisi dan menyerahkannya kepada Mdm Chan. Pada 15 Disember 2017, perayu memfailkan writ di Mahkamah Tinggi di mana kes perayu adalah bahawa pada tahun 2005 responden memasuki tanah dan memasang tiang kabel dan dengan itu responden menceroboh tanah dan terdapat pencerobohan berterusan. Responden membantah bahawa siasatan penilaian telah diadakan pada 20 April 2004 di mana Pentadbir Tanah Daerah, Johor Bahru ('PTD') menetapkan bahawa sejumlah RM165,87.81 ('jumlah pampasan') perlu dibayar sebagai pampasan disebabkan oleh kemasukan responden ke tanah ('perintah pampasan'). Hakim yang bijaksana menolak tuntutan perayu dengan memutuskan bahawa: (a) tidak ada yang tidak teratur mengenai serahan Notis Jadual Pertama kepada Mdm Chan; (b) perintah pampasan adalah tidak sah kerana peninggalan tanah daripada Jadual LA dan kerana kehadiran Mr Subas pada pendengaran di hadapan PTD; dan (c) memandangkan perayu menyedari kewujudan tiang kabel responden di tanah sejak tahun 2005 dan menegaskan bahawa jumlah pampasan tidak harus dibayar kepada Mr Subas melainkan kepada perayu dan kerana perayu tidak memohon untuk mempersoalkan perintah pampasan, kemasukan awal responden di tanah adalah sah dan mematuhi undang-undang. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan dengan kos RM10,000:

(1) Notis Jadual Pertama yang diserahkan kepada Mdm Chan sah dan betul. Fakta bahawa Mdm Chan bukan pentadbir bukanlah faktor membatalkan. Ketika Notis Jadual Pertama diserahkan, perayu bukan pemilik tanah berdaftar. Oleh itu, bukan bagi perayu (sebagai pembeli berikutnya) untuk membangkitkan apa-apa isu (12 tahun kemudian) berkenaan dengan sebarang kekurangan atau ketidakpatuhan yang

dikatakan dalam Notis Jadual Pertama. Oleh kerana tidak ada bantahan oleh Mdm Chan atau oleh pentadbir harta pusaka si mati berkaitan dengan Notis Jadual Pertama, tidak ada persoalan PTD mengadakan siasatan untuk mendengar bantahan. Fakta bahawa Notis Jadual Pertama telah menyatakan bahawa pendengaran bantahan pada tarikh 'yang akan ditetapkan' adalah tidak fatal, terutama ketika semua keadaan telah dipertimbangkan. Keadaannya adalah: (a) ketiadaan bantahan daripada mereka yang boleh (tetapi tidak) membantah; dan (b) penyertaan tanpa syarat oleh Mr Subas (sebagai pihak harta pusaka si mati) dalam siasatan, yang secara jelas atau tersirat membuktikan bahawa tidak ada bantahan terhadap Notis Jadual Pertama dan/atau terhadap pelaksanaan hak mereka oleh responden di bawah s 11(5) Akta dan kemasukan di tanah dan pemasangan tiang kabel di atasnya (lihat perenggan 126–127, 129, 136 & 139–140

(2) Fakta bahawa tanah tersebut tidak tersenarai dalam Jadual LA, tidak melarang Mr Subas, pentadbir yang sah dengan locus standi untuk bertindak bagi pihak harta tanah. Oleh itu, perintah pampasan adalah tidak terbatal dan tidak sah (lihat perenggan 143–144).

(3) Dalam apa jua keadaan, sebenarnya tidak ada pencerobohan atas tanah kerana kemasukan responden di tanah dan pemasangan tiang kabel dilakukan menurut s 11 Akta. Kedua-dua Notis Jadual Pertama dan perintah pampasan sah dan mengikat semua pihak, termasuk perayu sebagai pembeli tanah berikutnya (lihat perenggan 149).]

Cases referred to

Al Rashidy Kassim & Ors v Rosman Roslan [2007] 4 MLJ 297; [2007] 3 CLJ 361; [2007] 13 AMR 341, FC (refd)

Chong Thain Vun v Watson & Anor [1968] 1 MLJ 65; [1967] 1 LNS 29, HC (refd)

Fairise Odyssey Sdn Bhd v Tenaga Nasional Bhd [2015] 8 MLJ 625; [2014] 1 LNS 842; [2014] AMEJ 0977; [2014] MLRHU 587, HC (refd)

Government of Malaysia v Mohamed Amin Bin Hassan [1986] 1 MLJ 224, SC (refd)

Lai Wooi Giap v Rosli Zakaria & Anor [2020] MLJU 558; [2020] 7 CLJ 477, CA (refd)

Ong Bee Yam v Osprey Sdn Bhd & Ors [1996] MLJU 444; [1997] 5 CLJ 408; [2000] 1 MLRH 4, HC (distd)

Public Textiles Berhad v Lembaga Letrik Negara [1976] 2 MLJ 58; [1976] 1 LNS 120; [1976] 1 MLRA 70, FC (refd)

Puran Singh v Kehar Singh & Anor [1939] 8 MLJ 71; [1937] FMSLR 1, HC (refd)

Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v Tenaga Nasional Berhad v Ng Ah Boon (third party) [2010] 1 CLJ 625; [2010] 7 AMR 168, HC (refd)

A *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625; [1992] 4 CLJ 2094; [1992] 1 AMR 333; [1992] 1 MLRA 332, SC (refd)
Tay Choo Foo v Tengku Mohd Saad Tengku Mansur & Ors And Another Appeal [2009] 1 MLJ 289; [2008] MLJU 554; [2009] 2 CLJ 363; [2008] 1 LNS 467; [2008] 3 MLRA 188, CA (folld)
B *Tenaga Nasional Bhd v Teobros Development Sdn Bhd* [2008] 6 MLJ 391; [2008] 5 AMR 310; [2008] 1 LNS 395, CA (refd)
Teobros Development Sdn Bhd v Tenaga Nasional Bhd [2007] 7 MLJ 67; [2007] 6 AMR 343, HC (refd)
Wong Pot Heng v Hj Zainal Abidin Putih & Anor [1990] 2 MLJ 410; [1990] 2
C CLJ 174, SC (refd)

Legislation referred to

Electricity Regulations 1994
Electricity Supply Act 1990 ss 9, 11, 11(2), (3), (4), (5), (6), (7), (10),
D 12, 13, 14, 15, 16, Second Schedule
Evidence Act 1950 s 114(g)
Federal Constitution art 13
Pengurusan Danaharta Nasional Berhad Act 1998

E **Appeal from**: Suit No JA-23NCVC-28–12 of 2017 (High Court, Johor Bahru)

Ng Chew Hor (Chin Yew Kuan with him) (YK Chin) for the appellant.
Alvin John (Rubachandran Govindasamy with him) (Alvin John & Partners) for
F *the respondent.*

Nantha Balan JCA (delivering judgment of the court):

INTRODUCTION

G

[1] This is an appeal by the appellant (plaintiff) against the decision of the learned judge of the High Court in Johor Bahru dismissing the appellant's claim against the respondent (defendant) after a full trial. The decision appealed against is dated 28 May 2019. We heard the appeal on 12 February
H 2020 and dismissed it with costs. These are our reasons for dismissing the appeal.

[2] The respondent is a public listed company and is licensed under s 9 of the Electricity Supply Act 1990 (Act 447) ('the Act') to supply electricity. Under
I the Act, the respondent has a right to enter private land to erect pylons for their electricity transmission lines. The exercise of the statutory right is however, subject to the respondent's strict compliance with the requirements of the Act.

[3] In 2005, the respondent entered upon part of the land held under Geran

50333 Lot 891 Mukim Sungai Tiram, Daerah Johor Bahru, Negeri Johor ('the land') and erected pylon cables over the land. The pylon cables were part of a transmission line over the land. The total area of the land is about 507.4983 acres. The area occupied by the pylon cables is 8.9656 acres.

[4] The appellant purchased the land at a public auction on 5 December 2002. They became the registered owner of the land on 20 December 2005.

[5] On 15 December 2017 the appellant filed the writ in the High Court in Johor Bahru. This would be about 12 years after the appellant became the registered owner of the land. The appelant's case is that in 2005 the respondent entered the land and erected pylon cables over an area measuring 8.9656 acres, and as such the respondent trespassed on the land. The appellant claims that there is a continuing trespass. In para 4 of the statement of claim, the appellant stated that, 'Defendan telah sejak tahun 2005, mencerobohi sebahagian tanah tersebut dengan membina di atas sebahagian tanah tersebut Pylon Cables dan kini masih mencerobohi tanah tersebut'.

[6] The following reliefs were sought in the writ:

(a) Satu perintah injuksi mandatory bahawa Defendan hendaklah serta merta merobohkan semua Pylon Cables yang didirikan dan atau dibina diatas sebahagian tanah yang dipegang di bawah hakmilik Geran 50333 Lot 891, Mukim Sungai Tiram, Daerah Johor Bahru, Negeri Johor (selepas ini dirujuk sebagai 'tanah tersebut'), yang luas pencerobohan oleh Defendan tersebut ke atas tanah tersebut ialah lebih kurang 8.9656 ekar;

(b) Satu perintah injuksi menghalang defendan, ajen-ajen dan atau perkerja-perkerja [*sic*] Defendan dan atau sesiapa pun yang diarahkan atau diberikuasa oleh Defendan daripada memasuki atau mencerobohi ke dalam mana-mana bahagian tanah tersebut;

(c) Gantirugi khas sejumlah RM10,580,000.00 untuk pencerobohan tanah tersebut;

(d) Gantirugi am untuk pencerobohan tanah tersebut;

(e) Gantirugi teladan dan gantirugi exemplari;

(f) Faedah ke atas jumlah yang dihakimi pada kadar 5% setahun daripada 1.1.2005 (atau mana-mana tarikh yang difikirkan sesuai dan adil oleh Mahkamah yang mulia ini) sehingga tarikh penyelesaian penuh;

(g) Kos;

(h) Relief [*sic*] selanjutnya atau relief [*sic*] lain yang difikirkan sesuai dan adil oleh Mahkamah yang mulia ini.

[7] The respondent filed their defence on 29 January 2018 and asserted (per para 4) that they lawfully entered upon the land pursuant to s 11(2) for the

purpose of building the Transmission Line 132kV from Pencawang Masuk Utama ('PMU') Tanjung Langsat to PMU Tanjung Belungkur.

[8] The respondent further contended that an assessment inquiry (under s 16) was held on 20 April 2004 whereupon the Pentadbir Tanah Daerah, Johor Bahru ('the PTD') determined that a sum of RM165,817.81 ('the compensation sum') was payable as compensation by reason of the respondent's entry upon the land. To-date the compensation sum has not been paid to any party. The PTD's order dated 20 April 2004 shall be referred to as 'the compensation order'.

[9] The main issue for determination at the trial before the High Court was whether the respondent's initial entry upon the land was validly done pursuant to s 11 (via notice dated 5 November 2002) and whether the compensation order in relation to the compensation sum was valid and binding on all parties. We may now turn to the background.

BACKGROUND

[10] The original registered owner of the land was one Mr Lim Kong ('the deceased'). The deceased died on 21 April 2002. The widow of the deceased is Mdm Chan Kwan Ying ('Mdm Chan'). At all material times, SIME Bank Bhd (previously United Malayan Banking Corp Bhd) ('the bank') had granted banking facilities to the deceased.

[11] A legal charge was created over the land (via Charge Presentation No 85820/96 dated 24 December 1996) in favour of the bank as security for the banking facility. On 27 June 2000, the banking facility and the security (the charge) was taken over by Danaharta Managers Sdn Bhd ('Danaharta') pursuant to the Pengurusan Danaharta Nasional Berhad Act 1998.

[12] Following the demise of the deceased, letters of administration ('the LA') for the estate of the deceased were granted on 23 October 2002. The LA was issued on 26 November 2002. Pursuant to the LA, Mr Tan Keat Hing ('Mr Tan') and Mr Subas Rao a/l Appalanaaidu ('Mr Subas') were appointed as the administrators of the estate of the deceased.

[13] The land was not stated as an asset of the estate of the deceased in the list of assets per the Schedule to the LA. The learned judge held that due to this omission, the compensation order was bad in law. However, despite this purported infirmity, the learned judge proceeded to dismiss the appellant's claim for trespass on the ground that the respondent's initial entry upon the land was lawful.

[14] For present purposes, it is relevant to mention that there was default in respect of the banking facility. Danaharta took recovery action and eventually auctioned off the land on 5 December 2002. The appellant was the successful bidder at the auction. Thereafter, Danaharta and the appellant (as purchaser) executed a sale and purchase agreement dated 30 January 2003 ('the SPA').

[15] The SPA was for the purchase of the land, as well as two other parcels of land namely Lot No 534 Geran 50331 Mukim Sungai Tiram, Daerah Johor Bahru, Johor and Lot No 715 Geran 50332 Mukim Sungai Tiram, Daerah Johor Bahru, Johor. The appellant duly paid the full purchase price under the SPA (see: letter dated 10 April 2003 from Danaharta's Solicitors, Messrs Shook Lin and Bok to the appellant's solicitors, Messrs Lee Fook Leong & Co).

NOTICE OF ENTRY — SECTION 11 OF THE ACT

[16] Pursuant to s 11(2), the respondent issued a Notice of Intention to Enter and Do Work on Land dated 5 November 2002 (*notis cadangan memasuki dan membuat kerja*) ('the first Schedule Notice') for the purposes of building the transmission line.

[17] Section 11 (with emphasis added) reads as:

> 11(1) *Subject to as hereinafter provided*, whenever it is necessary so to do for the purpose of installing any system of distribution of energy under this Act, a licensee may lay, place or carry on, under or over any land, other than State land, such posts and other equipment as may be necessary or proper for the purposes of the licensed installation, as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, *paying full compensation in accordance with* section 16 *to all persons interested* for any disturbance, damage or disability that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment.
>
> (2) *Before entering* on any land for the purpose specified in subsection (1), the licensee shall give a notice stating as fully and accurately as possible the nature and extent of the acts intended to be done. The notice shall be substantially in the form set out in the First Schedule *and the District Land Administrator shall specify a date upon which the State Authority shall inquire into any objection* that may have been made as hereinafter provided.
>
> (3) The aforesaid *notice shall be given* —
>
> (a) in the case of alienated land, to *the owner or occupier*;
>
> (b) in the case of reserved land, to the officer or any other person in charge of the reserved land or, in the absence of any such officer or person, to the District land Administrator, and may be sent by registered post or be left at the usual or last known place of abode of the person to whom it is to be given or served by the licensee or the District Land Administrator at the expense of the licensee, either in the manner hereinbefore provided or in

A the manner provided for the service of notices by any written law relating to land in force in the State where the land is situated.

(4) *Any of the persons mentioned in subsection (3) may, within fourteen days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the licensee*. The objection may be made to the District Land Administrator, either verbally or in writing, and the District Land Administrator shall give notice of the objection to the State Authority and to the licensee.

(5) *If no objection* is lodged within the time limited for that purpose by subsection (4), *the licensee may forthwith enter on the land and do all or any of the acts specified in the notice given under subsection (2)*.

(6) *If an objection* is lodged and is not withdrawn before the date for the hearing thereof, the District Land Administrator *shall hold an enquiry, giving all parties an opportunity to be heard*.

(7) *Upon the conclusion of the enquiry* the District Land Administrator may either unconditionally of subject to such terms, conditions and stipulations as he thinks fit, *make an order* authorizing or prohibiting any of the acts mentioned in the notice given under subsection (2). The order shall be substantially in the form set out in the Second Schedule:

Provided that any party who is dissatisfied with the District Land Administrator's order may within twenty-one days after the order appeal against such an order to the State Authority which may then uphold, set aside or vary the order upon such terms, conditions and stipulations as it thinks fit.

(8) The State Authority may, if it thinks fit, in lieu of making an order under subsection (7), direct the acquisition of any land or part of any land included in a notice given under subsection (2).

(9) The decision of the State Authority under this section shall be final.

(10) Notwithstanding any written law relating to land matters, the Registrar —

(a) upon the production to him of the notice issued by the licensee under subsection (2) together with the statement by the District Land Administrator that no objection had been lodged by any of the persons mentioned in subsection (3); or

(b) upon the production to him of the original order made under subsection (7) and upon the deposit with him of a certified copy of such order, shall cause to be made on the register document of title relating to the land affected by the notice or order as the case may be, a note of the existence of the rights under such notice or order.

THE FIRST SCHEDULE NOTICE

[18] It is not in dispute that, a First Schedule Notice dated 5 November 2002 was served on Mdm Chan, as the next of kin of the deceased. Of course, by then the LA had already been extracted, and Mr Tan and Mr Subas were

already appointed as the administrators of the estate of the deceased. But the administrators have not taken issue with the service of the First Schedule Notice on Mdm Chan. However, the appellant has taken serious objection to the service of the First Schedule Notice on Mdm Chan. In this regard, the appellant contends that there has been non-compliance with s 11(3).

[19] The First Schedule Notice reads as follows:

SALINAN

No. Rujukan: TNBE 10/4/734 (B)

JADUAL PERTAMA (SEKSYEN 11(2)
MALAYSIA
JOHOR DARUL TAKZIM
AKTA BEKALAN ELETRIK 1990
NOTIS CADANGAN MEMASUKI DAN MEMBUAT KERJA
ATAS TANAH DIBAWAH SEKSYEN 11

Lim Kong (l/l BHG) 2, Perumahan Derumun, Damansara Height, 50490 Kuala Lumpur	Pegawai Penyerah: xxxxx No. Kad Pengenalan: xxxxx Tarikh Serahan: 29/1/03 Masa: 10.00 Pagi/Petang
No. Lot : 891	Nama Penerima: CHAN KWAN YING
No. Surat Milik : G50333 Mukim : SUNGAI TIRAM	No Kad Pengenalan: xxxxx

(1) Sila ambil perhatian bahawa kami Tenaga Nasional Berhad yang beralamat di 129, Jalan Bangsar, Peti Surat 11003, 50732 Kuala Lumpur adalah pemegang lesen yang bertarikh 30hb. Ogos 1990 dibawah Akta Bekalan Eletrik 1990 berhasrat memasuki tanah yang tersebut bagi maksud:-

(a) Membersih dan memelihara kebersihan suatu rentis selebar lebih kurang 2 RANTAI Jika ada pokok-pokok dalam kawasan tersebut ianya akan ditebang dan bangunan-bangunan disitu yang mana difikirkan membahayakan perlu dipindahkan. Rentis yang dicadangkan tu telah diukur dan ditunjukkan dengan warna merah didalam pelan berkembar bersama ini dimana ianya melintasi lot-lot tersebut di atas seluas lebih kurang 9.087 EKAR.

(b) Mendirikan tiang atau menara serta merentang dan mengendalikan talian bekalan eletrik didalam kawasan rentis itu dan membuat serta memelihara sebuah lorong selebar 5 kaki bagi pemeriksaan talian tersebut, dan memastikan kawasan itu bersih daripada tumbuh-tumbuhan.

(c) Menggunakan jalan-jalan masuk/lorong-lorong yang ada bagi menyempurnakan segala kerja yang tersebut di atas.

A (d) Melaksanakan kerja-kerja penyelenggaraan, pembaikan dan peningkatan pepasangan eletrik pada masa-masa hadapan.

(2) Didalam masa empatbelas hari dari tarikh penerimaan notis ini anda boleh menyerahkan suatu bantahan samaada secara lisan atau bertulis kepada Pentadbir Tanah Johor Baharu.

B (3) *Pentadbir Tanah Daerah telah menetapkan (Suatu tarikh kemudian) sebagai hari yang bantahan itu akan didengar.*

(4) Melainkan jika anda menyerahkan suatu bantahan dalam masa yang dinyatakan, adalah menjadi anggapan bahawa anda telah mengizinkan kemasukan kami ketanah itu mengikut terma-terma notis ini.

C (5) Anda akan dibayar pampasan yang sepatutnya bagi apa-apa kerosakan yang dilakukan.

Bertarikh pada 05 NOV 2002

D HASLINA HUSSAIN

b/p Tenaga Nasional Berhad (Emphasis added.)

E **[20]** Thereafter, the PTD held an inquiry on 20 April 2004. At the inquiry, the respondent's representatives were present together with Mr Subas (on behalf of the estate of the deceased). The inquiry was to determine the compensation payable on account of the respondent's entry upon the land. The assessment of compensation is governed by s 16 and it reads as:

F Section 16

The amount of compensation, if any, payable under section 11 or 13 shall be assessed by the District Land Administrator after such enquiry as he shall deem sufficient. The assessment shall be substantially in the form set out in the Third Schedule:

G Provided further that no compensation shall be payable by the licensee in respect of any tree within fifty feet of the centre line of any road constructed or maintained by the State Government or by any local authority unless it is proved that the tree was in existence prior to the construction of the road.

H (2) Any person aggrieved with the District Land Administrator's assessment may within twenty-one days after the assessment appeal to the State Authority whose decision shall be final.

THE COMPENSATION ORDER

I **[21]** Following the assessment, the PTD issued the compensation order which reads as:

JADUAL KETIGA
[Seksyen 16 (1)]
MALAYSIA
Negeri: JOHOR
AKTA BEKALAN ELEKTRIK 1990
PENAKSIRAN

Kepada: LIM KONG

(SUBAS RAO A/L APPALANAAIDU – 711216 – 05 – 5221)

2 Perumahan Derumun

Damansara Height

50490 Kuala Lumpur

Dalam hal siasatan bagi pembayaran pampasan di bawah Seksyen ~~10*~~, 11* atau ~~13*~~ Akta Bekalan Elektrik 1990 di antara pemegang lesen dan pemunya tanah yang terletak di Lot No. *891,* Hak Milik *G 50333* Mukim *Sungai Tiram*.

2. Suatu siasatan telah diadakan pada 20 April 2004 di hadapan Encik Abd Han bin Ramin, Pentadbir Tanah Daerah Johor Bahru. Dalam kehadiran Encik Abdul Sani bin Haji Abdul Aziz dan Encik Bujang bin Abu bagi pihak pemegang lesen dan nama seperti diatas bagi pihak pemunya tanah.

3. Selepas mengadakan siasatan, adalah dengan ini diperintahkan bahawa pampasan yang kena dibayar oleh pemegang lesen kepada pemunya tanah adalah seperti berikut:-

Hilang upaya tanah		139,063.81
Pokok	=	26,754.00
		RM165,817.81

Bertarikh pada 20hb. April 2004

Pentadbir Tanah Daerah AB. HAN BIN RAMIN

PEN. PENTADBIR TANAH (1)

JOHOR BAHRU

[22] Turning to the SPA and the transfer of the land, the appellant's solicitors made a presentation for the transfer of the land at Pejabat Tanah dan Galian Johor on 3 June 2003.

[23] However, the presentation of the transfer was rejected on 28 May 2004 and this was attributed to the presence of private caveats on the land. Eventually, the appellant crossed all the hurdles and became the registered proprietor of the land on 20 December 2005.

[24] The appellant's pleaded case is that in 2005, they discovered that the respondent had entered and built pylon cables on part of the subject land. In November 2005, the appellant engaged a land surveyor to survey the affected area and it was found that the area occupied by the respondent's pylon cables measured approximately 8.9656 acres (see Juru Ukur Jasa Jaya Sdn Bhd Survey Plan dated 12 December 2005 at p 244 *Bhgn* (*Jld* 2B) *Rekod Rayuan*).

THE CORRESPONDENCE

[25] The topic of payment of the compensation sum was the subject of various correspondence between the appellant, through their erstwhile solicitors, Messrs Tea Kelvin Kang & Co, the respondent and the PTD. For completeness, the relevant correspondence between the appellant's erstwhile solicitors, the PTD and the respondent (with all necessary emphasis added) spanning between November 2005 and February 2012 is reproduced hereinbelow.

[26] The starting point is a letter dated 22 November 2005 from Messrs Tea, Kelvin Kang & Co to the respondent. Essentially, the letter from the appellant's solicitors was to put the respondent on notice that the appellant had purchased the land and that any compensation that is ordered by the PTD should be made to the appellant.

[27] The intention and purpose of the said letter is self-evident; the letter in its entirety reads as follows:

> TEA, KELVIN KANG & COMPANY
>
> 22 November 2005
>
> OUR REF: 30168/SS/TCK/el/1202
>
> Pengurus Besar,
>
> Tenaga Nasional Berhad,
>
> Tingkat 2, Bangunan MPE
>
> Jalan 223/51A,
>
> 46710 Petaling Jaya,
>
> Selangor.
>
> *U.P. Encik Abd Razak Bin Nordin*
>
> Tuan,
>
> Per: Hartanah Geran No. 503331, 50332 & 50333 Lot 534, 715 & 891 Mukim Sungai Tiram, Johor
>
> Kami merujuk kepada perkara di atas dan mewakili Tetuan Easy Vista Sdn. Bhd.

Untuk makluman pihak tuan, Tetuan Easy Vista Sdn Bhd. telah membeli hartanah-hartanah tersebut di atas daripada Tetuan Danaharta Managers Sdn. Bhd. pada 24-4-2003 Segala wang pembelian telah pun dijelaskan oleh pihak klien kami.

Klien kami telah pada 3-6-2003 membuat pendaftaran tukar nama di Pejabat Tanah dan Galian, Johor.

Kami masih menunggu pihak Pejabat Tanah dan Galian, Johor mengendorsekan nama klien kami ke atas hartanah-hartanah tersebut.

Klien kami adalah pemilik sah bagi hartanah-hartanah tersebut.

Oleh yang demikian, segala pembayaran hendaklah dibuat kepada pihak Tetuan Easy Vista Sdn. Bhd. yang beralamat di No. 148, Bt. 1 ½, Jalan Buloh Kasap, 85000 Segamat, Johor dan bukannya kepada pihak lain. Jika tuan memerlukan butir-butir yang lebih lagi, sila berhubong [*sic*] dengan Encik Ku Hwa Seng Hphone No. 019-7771010

Segala perhatian pihak tuan kami dahului dengan ribuan terima kasih.

Yang benar,

s.k Tetuan Easy Vista Sdn. Bhd. (Emphasis added.)

[28] The respondent then issued a letter dated 29 December 2005 to the PTD annexing a copy of the appellant's aforesaid letter asking the PTD to issue a letter to direct that the compensation sum be paid to the appellant. The respondent's letter reads as:

TENAGA NASIONAL BERHAD

Ruj. Tuan:

Ruj. Kami: TNB 10/4/747

Tarikh: 29 Disember 2005

Pentadbir Tanah Johor Bahru

Pejabat Pentadbir Tanah

Johor Bahru

Karung Berkunci 738

80990 Johor Bahru

Tuan,

PER: BAYARAN PAMPASAN BAGI LOT 891 HAK MILIK G 50333 MUKIM SUNGAI TIRAM – Talian 132Kv PMU Tg. Langsat ke PMU Tg. Belungkur

Adalah saya dengan segala hormatnya saya merujuk kepada perkara di atas.

2. Seperti termaklum, urusan siasatan pampasan bagi lot di ats [*sic*] telahpun dijalankan di hadapan Pentadbir Tanah Daerah Johor Bahru pada 20 April 2004.

Pada masa itu tuan tanah telah diwakili oleh Encik Subas Rao a/l Appalaadu k.p. no. 711216-05-5221 yang bertindak sebagai pentadbir bagi lot berkenaan.

3. Semasa siasatan berkenaan dijalankan, Pentadbir Tanah Daerah Johor Bahru telah memutuskan bayaran pampasan sebanyak RM 165,817.81 dengan syarat Encik Subas Rao a/l Appalaadu diminta menyediakan surat lantikan peguam agar bayaran berkenaan dapt [*sic*] disalurkan kepada peguam yang dilantik. Malangnya sehingga hari ini, perkara berkenaan masih belum diuruskan.

4. Pada 22 November 2005, Tetuan Tea, Kelvin Kang & Company telah menulis surat kepada pejabat ini memaklumkan lot di atas telahpun dibeli oleh Tetuan Easy Vista Sdn Bhd. daripada Tetuan Danaharta Managers Sdn. Bhd. pada 24 April 2003 lagi dan seterusnya menuntut agar bayaran pampasan di bayar kepada anakguamnya (Salinan foto tekap surat berkenaan dikembarkan bagi kemudahan rujukan tuan).

5. Sehubungan itu, *kami ingin memohon kepada pihak tuan agar mengeluarkan surat arahan kepada pejabat ini agar bayaran berkenaan dibayar kepada Tetuan Easy Vista Sdn. Bhd.* yang beralamat di No. 148 Batu 1 ½ Jalan Buloh Kasap, 85000 Segamat, Johor Darul Takzim, sekiranya pada pandangan pihak tuan ianya teratur.

Sekian, terima kasih.

'TNB – PENGGERAK KEMAJUAN NEGARA'

Yang benar,

(Mustaffa bin Awang)

b.p. PENGURUS BESAR

PENGURUSAN TANAH & IZIN LALU

JABATAN PEMBANGUNAN ASET

BAHAGIAN PENGHANTARAN

TENAGA NASIONAL BERHAD (Emphasis added.)

[29] Thereafter, Messrs Tea, Kelvin Kang & Co sent a letter dated 12 December 2007 to the respondent informing them that all existing caveats over the land have been cancelled and that none of the parties who entered caveats, including Mr Subas, have any interest in the land. The appellant's solicitors expressed their client's disappointment that the compensation had yet to be paid to the appellant.

[30] According to the respondent, when this letter was issued, the appellant would have been aware of the outcome of the survey report by Juru Ukur Jasa Jaya Sdn Bhd Survey Plan dated 12 December 2005 which disclosed that the area occupied by the respondent's pylon cables measured approximately 8.9656 acres.

[31] The respondent contends that the fact that the appellant instructed Juru Ukur Jasa Jaya Sdn Bhd to do a survey is evidence that they were aware of the presence of the pylon cables on the land. In any event, it is the appellant's own pleaded case that the pylon cables were erected on the land since 2005.

[32] The fact pertaining to the appellant's awareness that the pylon cables were erected on the land since 2005 is mentioned at this juncture of the judgment so as not to lose sight of the fact that since 2005, the appellant was already aware of the presence of the pylon cables and by extension, the compensation sum that was ordered in relation to the respondent's entry upon the land.

[33] For now, it is pertinent to refer to the letter from Messrs Tea, Kelvin Kang & Co dated 12 December 2007 to the respondent (copied to the PTD) which reads as:

TEA, KELVIN KANG & COMPANY

12 Disember 2007

RUJ. KAMI: 30168/SS/TCK/el/1202

RUJ. TUAN: TNB 10/4/747

Pengurus Besar,

Tenaga Nasional Berhad,

Pengurusan Tanah & Izin Lalu,

Jabatan Pembangunan Aset,

Bahagian Penghantaran

Tingakt 2, Bangunan MPE,

Jalan 223/51A,

46100 Petaling Jaya.

U/p: En Rashid Bin Basir

Tuan,

Per: Pengambilan tanah untuk Izni [sic*] lalu untuk cable [sic] TNB di atas Geran No. 50331, 50332 & 50333 Lot 534, 715 & 891 Mukim Sungai Tiram, Johor.*

Kami merujuk perkara di atas dan mewakili Tetuan Easy Vista Sdn. Bhd.

Untuk makluman pihak tuan, klien kami telah mendapat Perintah Mahkamah Tinggi bertarikh 12hb Mac 2007 untuk mengeluarkan kaveat-kaveat persendirian (removal of private caveats) iaitu Subas Rao A/L Appalaaldu, Tan Keat Hin, Jova Resort & Development Sdn Bhd dan Wismuda Sdn Bhd yang tidak mempunyai apa-apa kepentingan di hartanah tersebut. (Sesalinan perintah dan geran baharu dilampirkan disini untuk rujukan tuan)

Untuk makluman pihak tuan sehingga kini tiada pampasan dibayar kepada klien kami.

Oleh yang demikian, pihak klien kami berharap pihak TNB dapat mengadakan atau menetapkan satu tarikh perdengaran [sic] secepat mungkin untuk pembayaran pampasan untuk tanah yang diambil guna oleh pihak TNB semenjak 2006 untuk izin lalu.

Yang benar,

s.k. 1. Tetuan Easy Vista Sdn. Bhd.
2. Pentadbir Tanah Johor Bahru
Pejabat Pentadbir Tanah
Johor Bahru
Karuing Berkunci 738
80990 Johor Bahru
Ruj. Tuan: (35) dlm.PTJB (PEMB): 141/2001

[34] Messrs Tea, Kelvin Kang & Company then sent a letter dated 25 January 2008 to the respondent and referred to the earlier letter dated 12 December 2007. The letter reads as:

TEA, KELVIN KANG & COMPANY

25 January 2008

OUR REF: 30168/SS/TCK/el/1202

YOUR REF: TNB 0/4/747

Pengurus Besar,

Tenaga Nasional Berhad,

Pengurusan Tanah & Izin Lalu,

Jabatan Pembangunan Aset,

Bahagian Penghantaran

Tingakt 2, Bangunan MPE,

Jalan 223/51A,

46100 Petaling Jaya.

U/p: En Rashid Bin Basir

BY COURIER

Dear Sir,

Per: Pengambilan tanah untuk Izni [sic] *lalu untuk kabel TNB di atas Geran No. 50331, 50332 & 50333 Lot 534, 715 & 891 Mukim Sungai Tiram, Johor*

Kami merujuk perkara di atas dan surat kami bertarikh 12 Disember 2007. Sukacita kami sekiranya pihak TNB dapat mengadakan satu *pengdengaran* [sic] pembayaran

pampasan untuk tanah yang diambil guna oleh pihak TNB. A

Yang benar,

s.k Tetuan Easy Vista Sdn. Bhd.

[35] In a letter dated 3 March 2008, the appellant's solicitors wrote to the respondent threatening to take the matter to court over the issue of compensation sum, unless the respondent gave a response within 14 days of their letter. The letter reads as: B

TEA, KELVIN KANG & COMPANY C

3 March 2008

OUR REF: 30168/SS/TCK/el/1202

YOUR REF: TNB 0/4/747

Pengurus Besar, D

Tenaga Nasional Berhad,

Pengurusan Tanah & Izin Lalu,

Jabatan Pembangunan Aset, E

Bahagian Penghantaran

Tingakt 2, Bangunan MPE,

Jalan 223/51A, F

46100 Petaling Jaya.

U/p: En Rashid Bin Basir BY COURIER

Dear Sir,

Per: Pengambilan tanah untuk izni [sic] *lalu untuk kabel TNB di atas Geran No. 50331, 50332 & 50333 Lot 534, 715 & 891 Mukim Sungai Tiram, Johor* G

Kami merujuk perkara di atas dan surat-surat kami bertarikh 12 Disember 2007 dan 25 Januari 2008.

Sukacita kami sekiranya pihak TNB dapat memberikan kami jawapan kepada surat-surat kami tersebut di atas dalam tempoh empat belas (14) hari dari tarikh surat ini. Sekiranya kami tidak menerima apa-apa jawapan dari pihak TNB kami dalam tempoh yang tersebut klien kami akan merujuk perkara tersebut di atas kepada Mahkamah untuk mengadakan satu pengdengaran[*sic*] pembayaran pampasan untuk tanah yang diambil guna boleh pihak TNB. H I

Sekian dimaklumkan. Yang benar,

s.k. Tetuan Easy Vista Sdn. Bhd.

(Attention: Mr Ku Hwa Seng)

[36] On 11 February 2011, the respondent issued a letter to the PTD. The letter was copied to the appellant and their erstwhile solicitors. The letter, which purports to explain why the compensation sum has not been paid, reads as follows:

TENAGA NASIONAL BERHAD

Rujukan Tuan: (35) dlm PTJB(PEMB):141/2001

Rujukan Kami: TNB/PK/PTI 10/4/747

Tarikh : 11 Februari, 2011

Pentadbir Tanah

Pejabat Tanah dan Daerah Johor Bahru

Karung Berkunci 738

80990 Johor Bahru

(UP: Tn. Haji Kamalludin Bin Haji Jamal)

Tuan,

PERMOHONAN UNTUK DIADAKAN SATU PERBINCANGAN BERHUBUNG TUNTUTAN PEMILIK TANAH TETUAN EASY VESTA MENGENAI PAMPASAN TANAH BERDASARKAN SEKSYEN 16 AKTA BEKALAN ELEKTRIK 1990

- Lot 891 Hakmilik GERAN 50333 Mukim Sungai Tiram, Daerah Johor Bahru

Adalah saya dengan hormatnya merujuk kepada perkara tersebut diatas dan surat TNB bertarikh 29 Disember 2005 adalah berkaitan dan dilampirkan bersama ini untuk rujukan pihak tuan.

2. Untuk makluman tuan, pada 20 April 004, Pentadbir Tanah Daerah Johor Bahru telah pun mengadakan perbicaraan pampasan tanah tersebut berdasarkan Seksyen 11 Akta Bekalan Elektrik 1990. Walaubagaimana pun, *pihak kami sehingga kini masih belum membuat bayaran kerana pemilik tanah yang hadir ketika itu masih belum mengemukakan dokumen yang diminta oleh Pentadbir Tanah Daerah Johor Bahru.*

3. Namun begitu, terdapat satu pihak lagi yang telah menghubungi kami iaitu Tetuan Easy Vista Sdn Bhd, dan mendakwa bahawa beliau adalah pemilik tanah berdaftar pada masa itu dengan mengemukakan beberapa dokumen sokongan. Pejabat Tanah Johor Bahru pernah memanggil satu perbincangan pada 8 Februari 2006 namun sehingga kini masih belum ada penyelesaian muktamad. Sesalinan surat PTD Johor Bahru bertarikh 20 Januari 2006 disertakan untuk rujukan tuan.

4. Sehubungan itu, kami memohon agar pihak tuan dapat memanggil satu mesyuarat bersama dengan pihak-pihak terlibat untuk menyelesaikan perkara ini. Kerjasama tuan didalam perkara ini kami dahului dengan ucapan terima kasih.

Sekian.

'TNB – PENGGERAK KEMAJUAN NEGARA'

Yang benar,

(Noorazmin Bin Salleh)

b.p. PENGURUS BESAR

Jabatan Pengurusan Tanah Dan Izinlalu

Bahagian Perkhidmatan Korporat

Tenaga Nasional Berhad

s.k. Easy Vista Sdn. Bhd.

PTD 71045, Jalan Danga

81200 Johor Bahru

s.k. Tetuan Tea Kelvin Kang & Company

Peguambela dan Peguamcara

Suite 5.1, Jalan Molek 1/9

Taman Molek

81100 Johor Bahru

Rujukan: 30168/SS/TCK/el/1202

s.k. Tetuan Hakim Arabi & Associates

Peguambela dan Peguamcara

Suite 8-15-2,

Tkt. 15 Menara Mutiara Bangsar

Jalan Liku Off Jalan Riong

59100 Kuala Lumpur (Emphasis added.)

[37] In a letter dated 22 December 2011, Messrs Tea, Kelvin Kang & Co informed the PTD that Mr Subas had no right to receive the compensation sum and that it should be paid to their client, the appellant. The letter reads as follows:

TEA, KELVIN KANG & COMPANY

Ruj Tuan: PTJB (PEM) 14/2001

Tarikh: 22hb Disember 2011

Pejabat Tanah & Galian Johor Bahru

Pegawai Undang-Undang

Lands And Mines Office Johor

Level 4, Parcel C25

Pusat Pentadbiran Baru Kerajaan Negeri Johor

79000 Nusajaya, Johor

U/P: Cik Syazana Binti Abdul Lajis

Tuan

TUNTUTAN PAMPASAN BAGI PROJEK TALIAN PENGHANTARAN ELEKTRIK 132KV DARI PMU TANJUNG LANGSAT KE PMU TANJUNG BELUNGKUR DI ATAS TANAH GERAN 50331 LOT 534, GERAN 50332 LOT 715 GERAN 50333 LOT 891 MUKIM SUNGAI TIRAM, DAERAH JOHOR BAHRU, NEGERI JOHOR

1. Kami merujuk kepada perkara di atas.

2. Kami mewakili Tuan punya tanah M/s Easy Vista Sdn Bhd (EVSD).

3. Untuk makluman pihak Tuan, tanah ini pada asalnya dimiliki oleh Lim Kang (si mati) dan dicagarkan kepada SIME Bank Berhad pada 15/8/1997. Akan tetapi cagaran tersebut telah diambilalih oleh M/s Danaharta Managers Sdn Bhd pada 27/6/2000 (DMSB) mengikut Akta Pengurusan Danaharta Nasional Berhad (APDNB). Lim Kang meninggal dunia pada 21/4/2002.

4. Surat Pentadbiran estet Lim Kang dikeluarkan pada 23/10/2002 dimana Tan Keat Hing dan Subas Rao A/L Appalaaidu dilantik sebagai pentadbir untuk estet Lim Kang. Tetapi pentadbir tersebut gagal membayar pinjaman cagaran terhadap DMSD.

5. DMSB dengan kuasa-kuasa yang diperuntukkan di bawah APDNB telah memeterai satu perjanjian jualbeli dengan klien kami EVSD dengan harga RM11,318,999-00. Pentadbir estet Lim Kang sedar bahawa pihak DMSB berhak berbuat demikian.

6. EVSB telah masukkan satu kaveat persendirian pada 22/2/2003 untuk menjaga kepentingan mereka dan harga jual telahpun dijelaskan sepenuh pada 24/4/2005 DMSB mengeluarkan satu 'Certificate of Sale by Private Treaty' kepada Klien kami untuk membolehkan pihak klien kami menyempurnakan pindahmilik tanah tersebut di PTG Johor Bahru.

7. Tetapi pindahmilik tersebut ditolak oleh PTG atas alasan terdapat tiga kaveat persendirian yang dimasukkan oleh:-

   a) Pentadbir Estet Lim Kang iaitu Tan Keat Hing dan Suba Roa atas alasan mereka adalah pentadbir tanah tersebut;

   b) Jove Resort Development Sdn Bhd;

   c) Wismuda Sdn Bhd Sdn Bhd atas alasan mereka telah membayar RM100,000-00 kepada Tan Keat Hing dan Subas Rao.

8. DMSB telah berapa kali mengutus surat kepada mereka untuk melepaskan kaveat-kaveat tersebut tetapi mereka telah tidak membalas surat-surat tersebut.

9. *Pentadbir estet Lim Kang tersebut sedari bawah tanah tersebut telahpun dijual kepada klien kami tetapi salah seorang daripada pentadbir iaitu Subas Rao telah menghadiri perbicaraan pampasan untuk izinlalu TNB untuk tanah tesebut. Tetapi beliau tidak memberi gambaran sebenar kepada pihak Tuan. Beliau tiada hak untuk menerima pampasan tersebut*.

10. Klien kami telah pada 27/9/2005 mengemukakan satu tindakan Mahkamah untuk melepas kaveat-kaveat tersebut.

11. Klien kami, DMSB dan PTG dengan secara oral bersetuju bahawa pindahmilik tersebut boleh disempurnakan secara perakuan tukar milik kepada Klien kami tanpa melepaskan kaveat tersebut. PTD Johor Bahru. Pada 25/12/2005 PTG Johor telah menyempurnakan pindahmilik tanah tersebut daripada DMSB kepada EVSD.

12. Pada 12/3/2007, Mahkamah Tinggi Johor Bahru telah memutuskan bahawa kaveat-kaveat yang dimasukkan oleh pihak pentadbir Estet Lim Kang dan lain-lain pihak dibatalkan kerana mereka tiada kepentingan langsung ke atas tanah dan pemilik tanah adalah Klien Kami M/s Easy Vista Sdn Bhd.

13. *Kami berharap bahawa penjelasan di atas akan mempercepatkan bayaran pampasan kepada Klien kami*.

Sekian, terima kasih.

Yang benar,

TEA, KELVIN KANG & COMPANY

DATO' TEA CHOO KENG

cc. M/s Easy Vista Sdn Bhd (Emphasis added.)

[38] The PTD then wrote to the respondent (*via letter dated 20th January 2012*) and suggested that the compensation sum be paid into the High Court at Johor Bahru as there was (apparently) some uncertainty as to who should receive the compensation sum. The PTD's letter reads as:

PENTADBIR

PEJABAT PENTADBIR TANAH

JOHOR BAHRU,

KARUNG BERKUNCI 738

80990 JOHOR BAHRU

Ruj. Tuan:

Ruj. Kami: (3) dlm. PTJB.(PEMB) 141/200

Tarikh: 20 Januari, 2012

Ketua Pengurusan Tanah Dan Izinlalu

Jabatan Pembangunan Asset,

Bahagian Penghantaran TNB,

Tingkat 2, Bangunan MPE,

Jalan 223/51A,

86100 Petaling Jaya, Selangor.

Tuan,

TUNTUTAN PAMPASAN BAGI PROJEK TALIAN PENGHANTARAN ELEKTRIK 132KV DARI PMU TANJUNG LANGSAT KE PMU TANJUNG BELUNGKUR DI ATAS TANAH LOT 891 GERAN 50333 MUKIM SUNGAI TIRAM, JOHOR BAHRU.

Perkara tersebut di atas adalah dirujuk.

2. Berikutan dari perbincangan tuntutan bayaran pampasan bagi Projek Talian Penghantaran 132 kv dari Tanjung Langsat ke Tanjung Belungkur di pentadbiran ini pada 6.7.2011 dan surat daripada Tea, Kelvin Kang & Company bertarikh 22.12.2011 disebabkan:-

i) Tiada kepastian siapakah yang berhak mendapat pampasan tersebut.

ii) Pihak tuan adalah dicadangkan untuk mendepositkan pampasan tersebut ke Mahkamah Tinggi Johor Bahru.

3. Bersama-sama ini disertakan sesalinan surat daripada Tea, Kelvin Kang & Company untuk makluman tuan.

Sekian, terima kasih.

'BERKHIDMAT UNTUK NEGARA'

(HAJI KAMALLUDIN BIN HAJI JAMAL)

b.p Pentadbir Tanah

Johor Bahru

[39] The respondent replied by letter dated 23 February 2012 to the PTD requesting the PTD to provide an affidavit to state that the PTD is not able to decide who should receive the compensation sum. The letter reads as:

TENAGA NASIONAL BERHAD

Rujukan Tuan: (3) dlm. PTJB. (PEMB) 141/2001

Rujukan Kami: TNB 10/10/1029

Tarikh: 23 Februari 2012

Pentadbir Tanah Johor Bahru

Pejabat Pentadbir Tanah

Johor Bahru

Karung Berkunci 738

80990 Johor Bahru

U.P: Tn. Haji Kamalludin bin Haji Jamal

TUNTUTAN PAMPASAN BAGI PROJEK TALIAN PENGHANTARAN ELEKTRIK 132KV DARI PMU TANJUNG LANGSAT KE PMU TANJUNG BELUNGKUR DI ATAS TANAH LOT 891 GERAN 50333 MUKIM SUNGAI TIRAM, JOHOR BAHRU – DEPOSIT WANG PAMPASAN KE MAHKAMAH

Dengan segala hormatnya, saya merujuk surat tuan bertarikh 20 Januari 2012 mengenai perkara tersebut di atas dengan ucapan terima kasih.

2. Untuk makluman tuan, berdasarkan Akta Bekalan Elektrik 1990, Pentadbir Tanah Daerah (PTD) hendaklah membuat satu affidavit ke mahkamah yang menyatakan bahawa pihak PTD tidak dapat membuat keputusan terhadap pemilik yang berhak menerima pampasan dan mengarahkan TNB untuk mendepositkan wang pampasan tersebut kepada mahkamah. Kemudian dari itu, TNB akan mendepositkan wang pampasan itu ke Mahkamah Tinggi Johor Bahru bersama-sama dengan affidavit tersebut.

Sekian, untuk tindakan tuan selanjutnya. Terima kasih.

'TNB – PENGGERAK KEMAJUAN NEGARA'

(Noorazmin bin Salleh)

b/p Pengurus Besar

Jabatan Pengurusan Tanah & Izinlalu

Bahagian Perkhidmatan Korporat

Tenaga Nasional Berhad

OPEN MARKET VALUATION

[40] The appellant engaged Messrs Henry Butcher Malaysia (Pontian) Sdn Bhd ('the valuer') to undertake a valuation of that part of land which was affected by the presence of the respondent's pylon cables.

[41] The valuer undertook an inspection and rendered a valuation (based on compulsory acquisition) as at 15 November 2016 (see pp 223–246 A, pp Record *Bhg* C *Jld* 2B). In the valuer's opinion, the affected area (8.9656 acre) had an open market value of RM180,000 per acre which gives a sum of RM1,613,808 (rounded off to RM1,610,000). The valuer opined that since the area covered by the pylon cables has divided the land into two portions with different shapes wherein one part has become a triangle and the other part has an irregular shape, injurious affection is payable at the rate of RM180,000 per acre for the rest of the land measuring 498.5327 acres which gives a sum of

RM8,973,588 (rounded off to RM8,970,000).

[42] The total amount claimed by the appellant is therefore RM10,580,000.

DECISION OF THE HIGH COURT

[43] After a full trial, the learned judge concluded that there was nothing irregular about service of the First Schedule Notice on Mdm Chan. As for the compensation order, the High Court held that it was invalid due to the omission of the land from the Schedule to the LA and due also to presence of Mr Subas at the hearing before the PTD on 20 April 2004. However, given that the appellant was aware of the presence of the respondent's pylon cables on the land since 2005 and as they had all along asserted that the compensation sum should not be paid to Mr Subas but rather to the appellant and as the appellant was not seeking to impugn the compensation order, the respondent's initial entry upon the land is valid and lawful.

[44] The relevant parts of the learned judge's grounds of judgment are as follows.

> [9] It was also an agreed fact the Defendant in the exercise of its statutory function under the Act had issued the Notice 'Notis Cadangan Memasuki dan Membuat Kerja atas Tanah' under section 11(2) to build a transmission line 132kV from PMU Tg Langsat to PMU Tg Belungkur. The Notice was served on one Chan Kwan Yin (Chan) on 29th January, 2003. It was not disputed Chan was the widow of Lim Kong.
>
> [10] The evidence of PW2 showed that *the Plaintiff was not the owner of Lot 891 as at the date and service of the Notice (NOP/5-36)*. There was no action to set aside the Notice. He disagreed that unless the Notice was set aside by the court or by judicial review or by appeal to the State Executive Council that it was valid (NOP/40).
>
> He was legally advised in 2005 that there was a right of appeal to the entry; the Plaintiff did not lodge an objection and that there was no legal advice that if there is no objection within 2 weeks the entry is final and absolute (NOP/45).
>
> [11] The evidence of DW1 was that the Defendant was required to serve the Notice to the owner and that Chan was not the owner or Administrator (NOP/57). He agreed the Notice did not specify the date (NOP/59). Before the Notice was issued the Defendant knew who the registered owner was. A land search was done, and he was not sure there was a charge by Danaharta (NOP/59-60). In re-examination DW1 stated the Notice was served on Chan as the next of kin and service was regular as '*notis telah disampai kepada pemilik berdaftar atau pun wakil pemilik berdaftar pada kali ini adalah balu beliau sendiri, balu kepada Lim Kong sendiri*' (NOP/73).
>
> ..
>
> [13] The Notice issued was for work to build a transmission line 132kV from PMU

Tg Langsat to PMU Tg Belungkur. It was not disputed it was served on Chan who was the widow of Lim Kong. Although section 11(2) requires service on the owner there was nothing irregular about the service as Lim Kong had passed away and there was a connection between Chang and Lim Kong as the next of kin, as explained by DW1. Although no date was specified in the Notice for the date for objection, the aforesaid paragraph (4) had the words '(*suatu tarikh kemudian*)' — The Notice was valid and binding.

[14] The facts of this instant case are distinguishable from *Syarikat Pengangkutan Kesejahteraan Sdn Bhd and Anor v Tenaga Nasional Bhd* [2010] 1 CLJ 625 where the notice was served on someone totally unconnected to the registered owner at the material time and there were no such words as '*suatu tarikh kemudian*' (refer to page 634 for the notice in that case).

[15] At the time of the notice and service, the Plaintiff was not yet the registered owner such that it was not the owner within the meaning of section 11(2).

[16] As stated in section 11(4), any objection is to be lodged by the person to whom the notice is given. Here as stated by DW1 in his Q&A 13, there were no objections from the Administrators of the estate or the estate of the deceased to the Notice. Section 11(2), (3), (4) and (5) read together provide that if there is no objection lodged within 14 days of the receipt of the Notice, the Defendant may forthwith enter the land and do the acts specified in the Notice which was to construct he transmission line.

Refer to *Tenaga Nasional Bhd v Teobros Development Sdn Bhd* [2008] MLJU 415 and *Armugam a/l Letchumanan v Tenaga Nasional Bhd* [2011] 5 MLJ 279; [2011] 7 CLJ 721 which reaffirmed the position that if no objection is lodged within the 14 days period then the Defendant may forthwith enter the land.

...

[21] Although PW2 said the Plaintiff was the owner when the Order was issued that cannot be so as the Plaintiff became the owner of Lot 891 on 25th December, 2005. There was no action against PTD to set aside the Order and it was also not in this present claim (NOP38-39).

He disagreed that unless the Order was set aside by the court or by judicial review or by appeal to the State Executive Council that it was valid (NOP/40). He was referred to his lawyer's letter dated 22 November, 2005 to the Defendant (B/50) and stated they asked for payment but did not state the amount and there was no mention that the Defendant was trespassing on the Lot 891 (NOP/41-42).

With reference to the lawyer's letter 22 December, 2011 to PTD (C/11-12) he was asked about paragraph 13 and he replied 'we asking for new hearing on the hearing TNB, on the land'. He was next asked-

'Qn: Basically you wanted the compensation that was given by TNB under the izin lalu. You para 9 talked about izin lalu right away. So you wanted the compensation. You did not disputed TNB izin lalu at that time?

Ans: No, me expect they have to come up without another hearing.' (NOP/43)

A [22] It was also his evidence the Plaintiff did not file any application for another hearing.

...

Analysis and finding

B [26] The evidence of DW1 was that Lot 891 was not listed in list of assets over which the Letters of Administration were granted. That being the case there can be no right of administration over Lot 891 by the Administrators.

In *Ong Bee Yam v Osprey Sdn Bhd & Ors* [1996] MLJU 444; [1997] 5 CLJ 408 it C was held at page 409 'that a right of actions, being part of a deceased person's estate, must be included in grant of letters of administration before it can be enforced by an administrator'. Further at page 412 it was stated:

> The letters of administration makes no reference whatsoever to the 1st defendant's land arid neither is it stated in the letters of administration that the D plaintiff could bring any claim in respect of the 1st defendant's land. The plaintiff therefore has no legal capacity to bring this action on behalf of the estate of the deceased.

E [27] It thus follows that Subas in his capacity as Administrator to the estate (putting aside the question of whether he could have attended individually) should not have attended the inquiry as Lot 891 was not in the list of assets to be administered.

[28] Thus the Order was wrong in law. However, it cannot negate the earlier finding that the Notice was valid and regularly obtained such that the Defendant could have entered into Lot 891 to build the transmission line and there was no trespass.

F [29] The Court adds too that this finding that the Administrators could not administer Lot 891 also supports the earlier finding that service of the Notice on Chan was valid as she was a beneficiary of the estate.

[30] Notwithstanding that the Order was wrong in law, the conduct of the Plaintiff G as evident from its solicitor's letters dated 22nd November, 2005 (B/50) and 22nd December, 2011 (C/11-12) showed it was interested in the compensation and had not raised the issue of trespass then.

[31] The letter dated 22nd November, 2005 was the 1st letter to the Defendant where DW1 stated this was the 1st time they knew of the Plaintiff. In the 2nd last H paragraph was stated that all payments should be made to the Plaintiff (*segala pembayaran hendaklah dibuat*). This letter coming after the Plaintiff had knowledge of the alleged trespass would show the payments related to the compensation under the Order.

[32] In the letter dated 22nd November, 2011 paragraphs 9 and 13 as follows —

I 9. *Pentadbir estate Lim Kang (sic) tersebut sedari bawah tanah tersebut dijual kepada klien kami tetapi salah seorang daripada pentadbir iaitu Subas Rao telah menghadiri perbicaraan pampasan untuk izin lalu TNB untuk tanah tersebut. Tetapi beliau tidak memberi gambaran sebenar kepada pihak Tuan.*

...

13. *Kami berharap bahawa penjelasan di atas akan mempercepatkan bayaran pampasan kepada Klien kami*.

[33] Although PW2 said that letter was to ask for another hearing date, his evidence is not supported by the contents of the letter. This is because the letter referred to Subas attending the inquiry and not presenting an accurate picture and that Subas was not entitled to the compensation.

The reference to the compensation has to necessarily mean that arising from the inquiry as paragraph 13 to expedite the payment of compensation was also in reference to the inquiry.

[34] As confirmed by PW2 there was no application for another hearing date which meant there was no challenge to the Order if indeed the Plaintiff was disputing its validity.

[35] The Court finds the Order to be invalid due to the presence of the wrong party but that this finding does not negate the earlier finding on the validity of the Notice. There was therefore no trespass by the Defendant but only the issue of compensation.

[36] The conduct of the Plaintiff in seeking to expedite the payment of compensation under the Order and in now alleging trespass is not consistent with its earlier position.

[37] There was also no relief sought by the Plaintiff to set aside the Order.

THE APPELLANT'S ARGUMENT

[45] Before us, counsel for the appellant took as his first point, if not his main point, that the First Schedule Notice was defective in that it did not specify a date to hear objections and that it had not been served on the owner of the land. According to the appellant, these defects infected the First Schedule Notice and rendered the process of entry upon the land under s 11, as bad in law. Thus, it was argued that the entry and use of the land to erect the pylon cables constituted trespass on the land.

[46] In substance, the basic submission of the appellant was that the First Schedule Notice merely stated that a date will be fixed but no date was in fact fixed to hear objections. It was submitted that this was fatal to the validity of the First Schedule Notice.

[47] Counsel for the appellant said that the words 'Suatu tarikh kemudian' which was used in the First Schedule Notice does not qualify as a date for purposes of s 11(2). As such, s 11(2) was not complied with. Counsel framed his argument on the invalidity of the First Schedule Notice by referring to the decision of Justice Abdul Malik Ishak JCA in *Tenaga Nasional Bhd v Teobros Development Sdn Bhd* [2008] 6 MLJ 391; [2008] 5 AMR 310; [2008] 1 LNS 395 (CA) ('TNB v Teobros').

[48] In *TNB v Teobros* the learned judge stated, inter alia, that all ten sub-sections of s 11 must be complied with. The facts of that case are as follows. The respondent purchased six lots of land at a public auction held at the Malacca High Court. According to the respondent the register documents of titles of the six lots of land showed no endorsements of any right of entry of the appellant.

[49] Furthermore, a director of the respondent company gave affidavit evidence that the land title searches carried out prior to the auction revealed that there were endorsements of land acquisition in respect of three of the six lots of the land but upon enquiries, it was learnt that they were minor acquisitions for the purpose of road widening. When the respondent later drew plans to convert the six lots of land into a housing estate, they made enquiries at the appellant's office about the future supply of electricity for the new housing estate. The appellant ('TNB') then disclosed their plans to construct electricity pylons across three of the six lots of land (the lands) purchased by the respondent.

[50] It was only then that the respondent learnt that TNB had issued a notice under s 11(2) to the previous owner of the lands and therefore possessed a way-leave right over the lands and was by virtue of this right, a licensee of the lands. Upon this discovery the respondent applied to the High Court for, inter alia, declarations which would have the effect of annulling whatever rights TNB had to enter the lands.

[51] At the same time the respondent applied for an interlocutory injunction to preserve the status quo pending the disposal of the respondent's substantive claim and/or some directions or orders to be issued to TNB by the State Authority of Malacca.

[52] In that case, the respondent's substantive claim against the appellant centred on TNB's failure to comply with s 11(10). The respondent contended that under s 11(4), if the owner or occupier of the land chooses to object to the s 11(2) notice, the objection may be made to the District Land Administrator either verbally or in writing. Since an objection could have been lodged by the owner verbally, it became necessary for TNB to comply with s 11(10) — to obtain a written statement from the District Land Administrator stating that no objection had been lodged by the owner or occupier.

[53] TNB's stand at the High Court was that they had an absolute right to enter the respondent's land and that the search results were in their view immaterial. The learned High Court judge granted the interlocutory injunction (see *Teobros Development Sdn Bhd v Tenaga Nasional Bhd* [2007] 7 MLJ 67; [2007] 6 AMR 343 (HC)).

[54] In the appeal to the Court of Appeal, TNB submitted that the learned High Court judge erred in dealing with s 11(10) at length and that, in any case, TNB's duty to comply with s 11(10) was directory and not mandatory. TNB also faulted the learned High Court judge for failing to consider s 11(5) which had allegedly created a perpetual right of entry for TNB.

[55] In addition, it was submitted that as a public authority, TNB ought to be regarded favourably by the court. The Court of Appeal dismissed TNB's appeal. The Court of Appeal opined that s 11(5) had to be viewed in its correct perspective because on its own, it did not create any right of entry for the appellant.

[56] According to the Court of Appeal, s 11, and its ten subsections were legislatively enacted to provide a mechanism for a licensee under the Act to obtain a right to enter land to construct electricity pylons and/or lay electricity cables; to protect the rights of the owners and occupiers of the land who are affected by such a right of entry; and, to ensure that there is an endorsement on the register document of title of the affected land to give notice to those who conduct a title search in the future.

[57] The Court of Appeal said that although the process starts with the licensee issuing a notice under s 11(2) to the owner or occupier, for such notice to create any right of entry under s 11(5), the licensee must first obtain a statement from the District Land Administrator stating that there was no objection lodged by the owner or occupier.

[58] The Court of Appeal went on to hold that if there is any objection lodged by the owner or occupier of the land, then s 11(5) does not create any right of entry at all. This is because the effect of a notice under s 11(2) is completely nullified even if there was a verbal objection lodged by an occupier.

[59] The Court of Appeal held that the learned High Court judge had exercised his discretion judiciously in finding that the respondent had a bona fide serious issue to be tried as to whether a licensee could be said to acquire rights under s 11(5) without complying with s 11(10). The Court of Appeal said that the failure to endorse on the register document of title was fatal.

[60] Next, the Court of Appeal opined that the issue of whether there was negligence on the part of TNB for not entering the respondent's land for the last ten years and nine months after issuing the notice under s 11(2) and whether the doctrine of estoppel could be correctly invoked against TNB in these circumstances, were substantive observations for the High Court to consider and could not be considered in an interlocutory application. The Court of Appeal agreed with the High Court that the totality of the facts

disclosed bona fide serious issues to be tried.

[61] In the present case before us, counsel for the appellant also relied heavily on the decision of the High Court in the case of *Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v Tenaga Nasional Berhad v Ng Ah Boon (third party)* [2010] 1 CLJ 625; [2010] 7 AMR 168 (HC) ('SPK v TNB').

[62] In *SPK v TNB*, Hishamudin Mohd Yunus J (*as he then was*) dealt extensively with the issues relating to (non) compliance with s 11. It was a decision which was made after a full trial. Significantly, it should be noted that the Court of Appeal's decision in the case of *TNB v Teobros* was not mentioned in the grounds of judgment. In fact, the judgment makes no reference to any case law at all.

[63] In *SPK v TNB*, the facts were as follows. A company called Noble Idea Sdn Bhd ('Noble Idea') was the registered owner of a parcel of land, CT No 22937, Lot No 2888, Mukim of Cheras, District of Hulu Langat. By a sale and purchase agreement dated 11 April 1992, the first plaintiff purchased a portion of the land with an area of 1.038 acre from Noble Idea at a price of RM320,000.

[64] Prior to the purchase, the first plaintiff had carried out a search on the land title at the land office and the record on the title did not show that the land had been acquired or occupied by the defendant for its purposes pursuant to the Act. The first plaintiff paid Noble Idea the full purchase price; and on the strength of the agreement and payment, the first plaintiff lodged a caveat on 23 May 1992.

[65] The land was accordingly registered in the name of the first plaintiff on 6 May 1996; and the first plaintiff was in due course issued by the land office with a separate title for the portion purchased.The first plaintiff's portion was subsequently held under a new title known as Grant No 39169, Lot 244247, Mukim of Cheras, District of Hulu Langat.

[66] At the time of purchase, the category of land use was 'agriculture'. The first plaintiff intended to use the land as a petrol station. So, the first plaintiff applied to the state authority of Selangor to convert the land use to 'building'. This application was approved by the state authority on 21 August 1996. By a sale and purchase agreement dated 27 March 1997, the first plaintiff then sold the land to the second plaintiff at a price of RM4,275,000. Subsequent to the purchase, the second plaintiff caused the land to be surveyed, and their surveyor discovered that an area of 11,302 feet ('the disputed area') had been occupied by the defendant ('TNB') as part of its project known as 'Projek

Aliran Elektrik 275/132 KV dari Pudu Ulu ke Serdang' ('the Pudu Ulu — Serdang Project').

[67] The second plaintiff discovered that there were electric lines and cables running across the disputed area on poles built by TNB. The second plaintiff informed the first plaintiff of what they saw. The first plaintiff, however, either at the time of the purchase from Noble Idea or at the time of the sale to the second plaintiff, was not aware of the occupation by TNB. The first plaintiff had never been notified by TNB of any intended occupation, or of any inquiry; nor had the first plaintiff been awarded any compensation for land occupied by TNB pursuant to the Act.

[68] In *SPK v TNB*, the High Court found that in purported compliance with s 11(2), TNB issued the First Schedule Notice (exh D15) to one 'Wong Chiu Yiu, c/o 86, Taman Sri Langat, Jalan Reko, 43000 Kajang'. The First Schedule Notice, dated 10 December 1990, stated that TNB intended to erect electrical poles carrying electrical lines and cables on the disputed area.

[69] The First Schedule Notice stated that, 'Pentadbir Tanah Daerah menentukan ... sebagai hari yang bantahan itu akan didengar'. The First Schedule Notice was then served on one Ng Ah Boon. The compensation sum was also paid to Ng Ah Boon.

[70] At the trial, TNB could not muster a credible or any explanation as to why the First Schedule Notice was issued in the name of Wong Chiu Yiu and thereafter served on Ng Ah Boon and why the compensation sum was paid to Ng Ah Boon. TNB's only response was that the registered owner, Noble Idea Sdn Bhd did not object.

[71] The learned judge in the *SPK v TNB* case held as follows:

> [25] But there are other serious defects pertaining to the notice. *Not only was the notice addressed to the wrong person: the notice was also served on the wrong person. The notice was not served on Noble Idea, as it ought to have been* ...
>
> This is contrary to the requirement of sub-s (3) of s 11 which states that *the notice should be served on the landowner (or occupier), that is Noble Idea* ...
>
> [30] It is further to be observed that *the above notice also did not contain a date for the hearing of objections* (if any). *Section 11(2) imposes a duty on the part of the District Land Administrator to specify the date*.
>
> *This mandatory requirement* is repeated in the format of the notice in the First Schedule of the Act.
>
> In the notice at exh. D15, the dotted lines in the notice were *not filled in with a date*

but simply left blank. This omission is contrary to sub-s (2) of s 11 and the First Schedule of the Act.

[31] By reason of the above defects, the notice, to my mind, is bad in law.

[49] In my view it is wrong for the defendant to say that the occupation was carried out in accordance with s 11(2). The reality is far from that.

The truth of the matter is that the provisions of s 11 were never followed either by the defendant or the District Land Administrator. They merely paid lip service to the provisions of ss. 11 and 16 of the Act. The notice, purportedly issued under s 11(2), was not addressed to Noble Idea, but to another person, Wong Chiu Yiu; nor was it served on Noble Idea. *The notice was in any event seriously flawed as, apart from the fact that the notice was not addressed to and served on the registered owner, the notice (1) did not contain a date for the hearing of the objections*; and (2) did not adequately described the land to be occupied.

[50] The s 16 notice was also defective as it did not contain either the registered or business address of Noble Idea. Instead it contained the address of a third party, Ng Ah Boon. *The notice was not served on Noble Idea for the purpose of the inquiry* scheduled to be held on 30 December 1992. And as for the inquiry held on 29 January 1993, no notice was ever issued to any interested person (including Noble Idea.

...

[55] The presence of the phrase 'Before entering on any land ...' cannot be glossed over. In my judgment, the meaning of this phrase is that *the service of a s 11(2) notice on the landowner (or occupier) is a pre-condition for the entering* on the plaintiff's (or Noble Idea's) land by the defendant. On the facts of the present case, however, this pre-condition was never satisfied: *for a s 11(2) notice was never issued at all in the first place, let alone served*. In the light of the several serious defects in the notice (exh D15), as I have pointed out above, the notice (exh D15) *cannot in law be recognized as a s 11(2) notice*. It is a just a document devoid of any legal significance; nothing more than that. It was a worthless piece of paper. *The manner of service was defective as well*. In the light of the whole circumstances, for this court to give legal recognition to the occupation of the plaintiff's land by the defendant in the present case, would not only be contrary to the provisions of the Act, in particular ss. 11 and 16, *but would also be a violation of art 13 cl (1) of the Federal Constitution which provides that no person shall be deprived of his property save in accordance with the law.* What the defendant had done in the present case in relation to the plaintiff's land was clearly not in accordance with the law.

And in my judgment, it is no answer that Noble Idea had never objected to whatever was done by either the defendant or the District Land Administrator and had in effect accepted the compensation. (Emphasis added.)

[72] Reverting to the present case, counsel for the appellant contended that there was no inquiry held and no order authorising the acts carried out by the respondent was made. As such, the respondent cannot rely on the First Schedule Notice to enter upon the land. The appellant's next complaint is that,

the First Schedule Notice was only served on the next of kin of the owner (Mdm Chan) and not on the owner.

[73] It was argued that the learned judge was in error in holding that such service is good service on the owner. Counsel said that the respondent was required to serve the First Schedule Notice on the owner with a date for hearing of objection stated therein.

[74] It was also contended that the PTD should have proceeded to hold an inquiry into any objections and/or to issue the order under the Second Schedule to the Act (per s 11(7)), which had not been done and therefore, the entry into and/or use of the land by the respondent was unlawful.

[75] It was argued for the appellant that the learned judge had no power to fill in any gaps or to extend the word 'owner' to include the next of kin of the owner. Since no proper notice had been served on the owner of the land, the respondent could not rely on the First Schedule Notice to enter upon and/or to remain on the land.

[76] Counsel for the appellant said that in interpreting a statute, the court must resort to the ordinary and natural meaning of the words in a statute and the courts cannot fill in any gaps. Counsel referred to the following cases to support his argument, namely: (a) *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625; [1992] 4 CLJ 2094; [1992] 1 AMR 333; [1992] 1 MLRA 332 (SC); (b) *Wong Pot Heng v Hj Zainal Abidin Putih & Anor* [1990] 2 MLJ 410; [1990] 2 CLJ 174; (c) *Chong Thain Vun v Watson & Anor* [1968] 1 MLJ 65; [1967] 1 LNS 29 (HC); and (d) *Government of Malaysia v Mohamed Amin Bin Hassan* [1986] 1 MLJ 224 (SC).

[77] In the present case, the learned judge declined to follow the case of *SPK v TNB.* The learned judge distinguished the case of *SPK v TNB* and stated:

> [14] The facts of this instant case are distinguishable from *Syarikat Pengangkutan Kesejahteraan Sdn Bhd & Anor v Tenaga Nasional Berhad; Ng Ah Boon (third party)* [2010] 1 CLJ 625 where the notice was served on someone totally unconnected to the registered owner at the material time and there were no such words as '*suatu tarikh kemudian*' (refer to page 634 for the notice in that case).

[78] It was submitted for the appellant that the learned judge erred in distinguishing *SPK v TNB* as the crux of the holding in that case was that it is a pre-condition to entry of the land that the notice must be served on the registered owner of the land and a date must be specified in the notice, otherwise the notice is not in compliance with s 11, is defective and bad in law.

A **[79]** It was argued on behalf of the appellant in the present case that the words used in s 11(2) are clear and unambiguous and it mandates that the PTD shall specify a date in the First Schedule Notice for the state authority to inquire into any objections. In the instant case, this had not been done. In amplification, it was argued that there was no proper notice issued under
B s 11(2).

[80] Further, it was argued that there is no evidence of any written statement issued by the PTD stating that there had been no objections lodged by the owner or occupier of the land as necessitated by s 11(10).
C

[81] It was argued that there was a misdirection by the learned judge in failing to consider and hold that the burden of proof lay on the respondent to prove compliance with the provisions of ss 11–16 and that the respondent had failed to discharge the burden of proof. According to the appellant, an adverse
D inference ought to be made against the respondent under s 114(g) of the Evidence Act 1950 for their failure to call witnesses from the PTD to explain the process of compliance under the provisions of ss 11–16.

E **[82]** According to the appellant, the respondent and the PTD cannot skip the process of fixing a date to inquire into whether there are any objections to the works to be carried out that had been stated in the First Schedule Notice. As such, without first fixing such a date, the respondent and the PTD could not assume that there would be no objections.

F **[83]** According to the appellant, before the respondent could enter the land, the respondent must first convince the PTD to issue an order under s 11(7) but this had not been done.

G **[84]** In the present case, the respondent did not plead or lead any evidence of the issuance of the order under s 11(7). The next point raised was in relation the learned judge's finding that the compensation order was invalid as the land was not mentioned in the Schedule to the LA and that Mr Subas was not entitled to appear at the assessment hearing on behalf of the estate of the deceased.

H **[85]** On this issue, the appellant argued that the respondent's entry on the land was unlawful as the compensation order was held to be invalid and further, no compensation was paid rendering the entry and/the continued presence of the respondent on the land as unlawful.

I **[86]** It was argued that the learned judge had erred in holding that although the compensation order was wrong in law, it would not negate the validity of the First Schedule Notice or the compensation order or affect the right of the respondent to enter upon, to use and/or remain on the land.

[87] According to the appellant, the learned judge erred in law and on the facts in failing to hold that the appellant's conduct in seeking to expedite payment of the compensation sum and/or by the appellant's failure to claim or seek the relief to set aside the compensation order did not make the respondent's entry and remaining on or use of the land lawful and/or excuse the non-compliance, which would render the respondent's entry of and continued presence on and/or use of the land as illegal and unlawful.

[88] It was argued that the since no payment of compensation has been made, the respondent's entry upon and the use of the land is contrary to art 13 of the Federal Constitution, which renders the deprivation of the land as unlawful and illegal. Hence, it was argued that in the circumstances, the respondent's entry upon and continued presence on or use of the land was and continues to be a trespass. This is so, even if the initial entry on the land was lawful.

[89] The final point that was raised by the appellant is that estoppel cannot be raised against them premised on their conduct. It was argued that there can be no estoppel against the operation of statute law. Thus, it was argued that the appellant's conduct as per their letters (referred to earlier) wherein they sought to have the compensation sum paid to themselves instead of being paid to Mr Subas and their failure to challenge or raise any issue with respect to the process of entry on the land pursuant to the provisions of s 11 and assessment of compensation under s 16, does not create any estoppel against the appellant.

[90] Counsel referred to the following cases for the principle that there can be no estoppel against a statutory provision:

(a) *Puran Singh v Kehar Singh & Anor* [1939] 8 MLJ 71; [1937] FMSLR 1 (HC); and

(b) *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58; [1976] 1 LNS 120; [1976] 1 MLRA 70 (FC)

RESPONDENT'S ARGUMENTS

[91] We may now turn to the respondent's arguments. In this regard, it will suffice if reference is made to that part of their submissions which deal with the issues which were articulated on appeal and which formed the basis of this court's decision. The first point which was made is that when the First Schedule Notice was issued and served on Mdm Chan, the appellant was not the registered owner of the land. The administrators of the estate of the deceased did not object. Neither did Mdm Chan.

[92] Further, at the assessment hearing before the PTD, the appellant had

yet to become the registered owner of the land. But PW2 did confirm via his witness statement and during cross-examination that the appellant was aware of the assessment hearing on 20 April 2004. PW2 disagreed when it was put to him during cross-examination that in all the correspondence the appellant was merely pushing for the compensation sum to be paid to them rather than to Mr Subas on behalf of the estate of the deceased; that in none of the letters did the appellant suggest that the respondent was a trespasser on the land. But he was not able to point to any letter issued by their erstwhile solicitors which suggested that the respondent was a trespasser on the land.

[93] In so far as service of the First Schedule Notice on Mdm Chan is concerned, it was submitted that under s 11(3), the notice shall be given to the owner or occupier of alienated land.

[94] In this regard, the Act is precise wherein the notice under s 11 can be given *to an occupier* of the particular land. It is an undisputed fact that the recipient who received the First Schedule Notice was Mdm Chan, the widow of the deceased *(Lim Kong — the registered owner)*. Counsel referred to the Electricity Regulations 1994 PU(A) 38/1994 which defines 'occupier' as: '... the person occupying any premises and includes the person having the charge, management or control thereof either on his own account or as an agent of another person, but does not include a lodger'. Counsel said that Mdm Chan falls within the definition of 'occupier' when she received the First Schedule Notice from the respondent.

[95] As for the case of *SPK v TNB,* it was contended that the case can be distinguished. Counsel referred to para 25 of the case where the learned judge stated that '... there are serious defects pertaining to the notice. Not only was notice addressed to the wrong person; the notice was also served on the wrong person ...'. And in para 30, the learned judge stated that 'It is further observed that the above notice did not contain a date for the hearing of objections (if any). Section 11(2) imposes a duty on the part of the District Land Administrator to specify the date. This is a mandatory requirement is repeated in the format of the notice in the First Schedule of the Act. In the notice at exh D15, the dotted lines in the notice were not filled in with a date but simply left blank. This omission is contrary to subs-s (2) of s 11 and the First Schedule of the Act'.

[96] It was submitted for the respondent, the First Schedule Notice was properly served on 29 January 2003 at the correct address and received by Mdm Chan. Thus, unlike the case of *SPK v TNB* where the notice was wrongly addressed and served on a wrong person, here the First Schedule Notice was properly and validly served on Mdm Chan as the next of kin of the deceased registered owner of the land.

[97] Turning next to the appellant's complaint that 'the dotted lines in the notice were not filled in with a date but simply left blank', it was submitted that the First Schedule Notice which was served on Mdm Chan was *not left blank*. Instead, the empty dotted lines in the notice were written with the words 'Suatu tarikh kemudian'.

[98] Thus, this was indicative of the fact that the PTD was to fix a date later for the hearing of any possible objections. Therefore, it was submitted that the learned trial judge had correctly distinguished the case of *SPK v TNB*. Counsel emphasized that *SPK v TNB* was a case which concerned a First Schedule Notice where the date was left blank and which was served on a wrong party and at a wrong address. In the present appeal, the First Schedule Notice was served on Mdm Chan, at the proper residential address of the deceased with the notice clearly informing that the date for hearing with PTD will be notified later. Thus, it was submitted for the respondent that they had fully complied with the requirements in s 11(2).

[99] In amplification, it was contended that s 11(3) provides that the notice *shall* be given — *(a) in a case of alienated land* (as in the present case), either *to the owner or occupier* (the 'widow' at the time of service).

[100] The notice can be sent over by registered post or be left at the usual or last known place of abode of the person to whom it is to be given or served by the licensee or the PTD at the expense of the licensee. The First Schedule Notice was personally served on Mdm Chan at the last known address of the deceased registered owner. Hence, it was submitted that the service of the First Schedule Notice is proper and valid.

[101] Further, it was submitted that s 11(4) provides that 'any of the persons mentioned in subsection (3) may, within 14 days of the receipt of the notice therein referred to, lodge an objection to the intended acts of the licensee to the District Land Administrator, either verbally or in writing'. Once the objection is received, the PTD *shall* give notice for the objection to the state authority and to the licensee.

[102] In the present case, there is no evidence that there was any objection or opposition either from Mdm Chan or the administrators in relation to the First Schedule Notice.

[103] It was argued on behalf of the respondent that since the appellant is challenging the validity of the First Schedule Notice, it is they who bear the burden to proof that the First Schedule Notice is null and void/invalid. To this end, the appellant should have called or subpoenaed the PTD or its officer as a witness to explain issues relating to compliance with ss 11 and 16. Next counsel

for the respondent dealt with the issue pertaining to s 11(5). It was submitted, that s 11(5) provides that respondent can forthwith enter the land to do the necessary work in the absence of any objection being lodged within the stipulated time.

[104] In the present appeal, there is no evidence adduced or witnesses called by the appellant to show that objections had been raised against the respondent from entering the land. It was emphasised that Mdm Chan and the administrators of the estate of the deceased did not raise any objection whatsoever with respect to the issuance of the First Schedule Notice under s 11. Thus, the respondent proceeded to enter into the land to carry out the necessary works as clearly stipulated in the statutory notice pursuant to the rights accorded under s 11(5).

[105] The respondent referred to the Henry Butcher Report and Valuation dated 29 December 2016, wherein the appointed valuer included in Appendix 'C' — *PLAN MENUNJUKAN LALUAN PENGHANTARAN ELEKTRIK YANG SEDANG DIBINA DIATAS LOT 891, MUKIM SUNGAI TIRAM, DAERAH JOHOR BAHRU*. The said plan dated 'pindaan' on 23 December 2005 and 5 January 2006 respectively clearly indicates that a portion of the land is reserved for TNB as 'Rizab Laluan Penghantaran Laluan'. It was contended on behalf of the respondent that the appellant as the new registered proprietor, took the land subject to the respondent's interest on the land described as 'Rizab Laluan Penghantaran Laluan'.

[106] In so far as the issue of continuing trespass is concerned, counsel for the respondent referred to the judgment of Justice Komathy JC (as she then was) in *Fairise Odyssey Sdn Bhd v Tenaga Nasional Bhd* [2015] 8 MLJ 625; [2014] 1 LNS 842; [2014] AMEJ 0977; [2014] MLRHU 587 (HC) where Her Ladyship said:

> [23] It is elementary that a trespass cannot constitute a continuing trespass if it never constituted a trespass to begin with. No continuing trespass of land will be committed by a defendant who has the express or tacit consent of the original owner of a land to erect a structure on the said land. In such circumstances the defendant is said to come on such land by the leave and licence of the plaintiff.

[107] Thus, it was argued that the appellant's allegation of trespass cannot constitute a continuing trespass when the initial entry by the respondent on the land was never a trespass to begin with.

[108] As for the learned judge's ruling that the compensation order is bad in law because the land was not listed as an asset in the Schedule to the LA and Mr Subas having no locus to attend the assessment hearing, it was contended that such an omission is not fatal as a supplementary Schedule to the LA could be

filed to include that which had been omitted. Further, the Schedule of Property annexed to the LA did not in law affect the title of the personal representative of a deceased person to institute legal proceedings.

[109] Reference was made to the case of *Tay Choo Foo v Tengku Mohd Saad Tengku Mansur & Ors And Another Appeal* [2009] 1 MLJ 289; [2008] MLJU 554; [2009] 2 CLJ 363; [2008] 1 LNS 467; [2008] 3 MLRA 188 (CA) wherein the Court of Appeal held as follows:

> [102] Another *argument raised by counsel for the 1st defendant was that the deceased passed away on 27 October 1993 but when the plaintiffs applied for letters of administration of the deceased's estate, they did not include the sum of RM1.2 million purportedly due and payable by the 1st defendant in the list of assets*.
>
> Counsel argued the fact that the said amount was not included in the list of assets even at the date of the action in the High Court showed that the plaintiffs were not informed by PW2 of the alleged verbal statement until very late. Further, PW2 never made any demand for the said shares or the said purchase price from the 1st defendant although he was purportedly the duly appointed attorney for the deceased; he did not even take such steps after the demise of the deceased.
>
> [103] *We are of the view that what has been canvassed above is a non-issue. Assets set out in the schedule forming part of a grant of letters of administration does prove a deceased's title to property scheduled therein. A supplementary schedule can always be attached upon discovery of any item not scheduled therein. With regards to this issue, we would refer to Khoo Kay Hock v E J Ketting & Ors* [1978] 2 MLJ 57; [1978] 1 LNS 78. The facts there showed that the plaintiffs had taken out a writ against the defendants claiming damages for negligently causing the death of the deceased.
>
> At the hearing the defendants contended, inter alia, that the plaintiff has no title to institute the action as the schedule of assets annexed to the grant of letters of administration did not include the claim or claims. *On appeal, it was held that the schedule of property to the grant of letters of administration did not in law affect the title of the personal representative of a deceased person to institute legal proceedings and the trial judge was correct in deciding that the appellants be allowed to file a corrective affidavit. Raja Azlan Shah FJ (as His Highness then was) said:*
>
> We feel that the objection raised on behalf of the defendants has no merit. We therefore agree with the decision of the learned trial judge that the plaintiff be allowed to file a corrective affidavit in proper form.
>
> *The schedule of property to the grant of letters of administration does not in law affect the title of the personal representative of a deceased person to institute legal proceedings. It does not affect him one way or another.* It is only a description of the property to be administered and not a description of his status to sue. The indorsement on the writ that the plaintiff is bringing the action in a representative capacity as administrator is the crucial matter. See Order 3 rule 4 of the Rules of the Supreme Court. See also *Bowler v John & Klowlem & Co Ltd* [1954] 3 All ER 556.The object of the law relating to the collection of estate duty is a fiscal measure enacted to secure revenue for the State on certain classes of property on death.

A It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of this law are conceived in the interest of revenue and once that object is achieved according to law, the party founding his claim on the schedule will not be defeated on the ground of the initial defect in the said schedule.

B [104] In *Chua Chee Chor v Chua Kim Yong & Ors* [1960] 26 MLJ 127, which was cited with approval in Khoo Kay Hock v. E J Ketting & Ors, one of the questions before the court was whether grant of letters of administration is conclusive evidence of ownership of assets set out in the schedule forming part of grant. It was held that when the court grants letters of administration, it does not go into C questions of title as to the assets alleged to be the property of the deceased at the time of his death and that such a grant is not, by virtue of s 41(2)(d) of the Evidence Ordinance, conclusive proof that the property in the schedule to the grant was owned by deceased at the time of his death. Smith J said (at p. 180):

D In the same manner it appears to me that when the Court grants Letters of Administration it does not go into questions of title as to the assets disclosed in the affidavit of the petitioner any more than it goes into the right of a testator to the property of which he purports to dispose in his will.

E *The principal object of the schedule to the grant of Letters of Administration appears to be for the purpose of ensuring that correct security is given. It does not prove the deceased's title to the property scheduled* (at pp 421–423) (Emphasis added.)

[110] As such, it was submitted that in the present appeal the learned High Court judge misdirected herself in taking the view that since the land was not F listed in the list of assets over which the LA were granted the administrator had no locus standi to attend the compensation hearing. The learned High Court judge relied in the case of *Ong Bee Yam v Osprey Sdn Bhd & Ors* [1996] MLJU 444; [1997] 5 CLJ 408; [2000] 1 MLRH 4 (HC), wherein it was held at p 408 (CLJ), 'A right of action, being part of a deceased estate, must be included in a G grant of letters of administration before it can be enforced by an administrator'.

[111] As such, the High Court held that Mr Subas in his capacity as administrator to the estate should have not attended the inquiry as the land was not in the list of assets to be administered.

H

[112] Counsel for the respondent said that the case of *Ong Bee Yam* can be clearly distinguished by the Court of Appeal's decision of *Tay Choo Foo*, where it was clearly stated at para [103] that '... A supplementary schedule can always be attached upon discovery of any item not scheduled therein'.

I

[113] In *Tay Choo Foo* the Court of Appeal further went on to state at para [103] that '... the schedule of property to the grant of letters of administration did not in law affect the title of the personal representative of a deceased person to institute legal proceedings and the trial judge was correct in deciding that the

appellants be allowed to file a corrective affidavit'.

[114] As such, it was argued before us that Mr Subas as one of the legally appointed administrators of the deceased estate had the requisite locus standi to attend the inquiry which was conducted by the PTD. The respondent submits that the PTD did not raise any objection at the presence of Mr Subas. There is also no evidence that Mdm Chan objected to the presence of Mr Subas at the inquiry. Further, after the land was transferred to the appellant, they did not raise any objection or file an application for another hearing date to challenge the compensation order which had been granted by the PTD under s 16.

[115] Counsel said that what is clearly evident from the correspondence issued by the appellant's previous solicitors was that the appellant wanted the compensation sum which had been awarded by the PTD under s 16 to be directed to the appellant as the new and rightful registered owner of the said land.

OUR DECISION

[116] This is essentially an action based on the tort of trespass for which a permanent injunction and damages are sought by the appellant. The respondent's entry on the land was undertaken pursuant to the issuance of the First Schedule Notice as per s 11. The First Schedule Notice was served on Mdm Chan. She did not object. The administrators also did not object to the service of the First Schedule Notice on her.

[117] The PTD held an inquiry on 20 April 2004 which was attended by amongst others, Mr Subas who was the co-administrator of the estate of the deceased. The presence of Mr Subas at the inquiry indicates quite clearly that he, as administrator of the estate of the deceased, had no objection to the issuance of the First Schedule Notice or as to the service on Mdm Chan. It is obvious enough that Mr Subas was present at the inquiry to protect the interest of the estate of the deceased vis a vis the compensation sum. The PTD had determined that a sum of RM165,187.81 was to be paid as compensation under s 16. To-date, that sum has not been paid and this was not for any want of trying but because the respondent did not and still does not know to whom that sum should be paid.

[118] There is evidence in the form of contemporaneous correspondence which were exchanged as early as November 2005 between the appellant and the respondent via the appellant's erstwhile solicitors asking the respondent to release the compensation sum to them on the basis that the appellant had purchased the land from Danaharta via the SPA.

[119] There is no doubt that the appellant only became the registered owner on 20 December 2005. The transfer of title to the land to the appellant was delayed due to the presence of caveats.

[120] However, there was also a competing claim by the administrators of the estate of the deceased for payment. The respondent referred the matter to the PTD who unfortunately could not determine that issue. The respondent was advised to deposit the compensation sum in court.

[121] But this was not done. The appellant's solicitors wrote to the PTD and asserted that Mr Subas had no authority to receive the compensation sum. It is clear that the sole and only concern of the appellant at all times was to receive the compensation sum which had already been determined by the PTD.

[122] The main issue in the appeal is in relation to the validity (or otherwise) of the First Schedule Notice which was served on Mdm Chan on 29 January 2003. By that date the administrators for the estate of the deceased had already been appointed and the LA had already been extracted.

[123] There is no evidence that there was any objection by Mdm Chan or by the administrators. As much as the appellant is the party which is seeking to impugn the First Schedule Notice, the burden was undoubtedly on them to adduce evidence in this regard. But none was forthcoming at the trial before the High Court.

[124] At any rate, it is fair to say that the fact that Mr Subas attended the PTD's inquiry on 20 April 2004 is a clear manifestation of acceptance or acquiescence on his part (*on behalf of the estate of the deceased*) that he had no issue with the validity of the First Schedule Notice.

[125] In so far as the purpose of s 11 is concerned, we agree with the enunciation by the Court of Appeal in *TNB v Teobros* that, 's 11 of the Act, and its ten sub-sections were legislatively enacted to provide a mechanism for a licensee under the Act to obtain a right to enter land to construct electricity pylons and/or lay electricity cables, to protect the rights of the owners and occupiers of the land who are affected by such a right of entry'.

[126] In this regard, the owner or occupier of the land was either Mdm Chan, as the next of kin of her deceased husband, or at any rate, the administrators of the estate of the deceased, who became clothed with legal authority to act on behalf of the estate upon the extraction of the LA. In our view, the fact that the First Schedule Notice was served on Mdm Chan, was in the circumstances valid and proper.

[127] She was clearly a beneficiary of the estate of her late husband. And she had the requisite interest in ensuring that her late husband's estate is duly protected. The fact that Mdm Chan was not the administrator is not an invalidating factor.

[128] Indeed, it has been recognised that even where there is no LA, beneficiaries of an estate of a deceased who died intestate, may take certain steps to protect the assets of the estate, if the assets are in jeopardy or at risk of being dissipated. See: (a) *Lai Wooi Giap v Rosli Zakaria & Anor* [2020] MLJU 558; [2020] 7 CLJ 477 (CA); and (b) *Al Rashidy Kassim & Ors v Rosman Roslan* [2007] 4 MLJ 297; [2007] 3 CLJ 361; [2007] 13 AMR 341 (FC).

[129] From the chronology and sequence of events, it is clear that at the time when the First Schedule Notice was served, the appellant was not the registered owner of the land. As such, it is not for the appellant (as the subsequent purchaser) to raise any issue (12 years later) with regard to any purported infirmities or non-compliance in the First Schedule Notice.

[130] In so far as the issue of infirmity in the First Schedule Notice is concerned, we do not agree that the present case can be equated with the First Schedule Notice which was impugned in the case of *SPK v TNB*. In that case, the First Schedule Notice read as, 'Pentadbir Tanah Daerah menentukan ... sebagai hari yang bantahan itu akan didengar'. Counsel for the appellant attempted to draw a parallel with the present case, where the First Schedule Notice here read as, Pentadbir Tanah Daerah telah menetapkan (*Suatu tarikh kemudian*) sebagai hari yang bantahan itu akan didengar.

[131] Clearly, in this case the First Schedule Notice informed the recipient (Mdm Chan) that a date will be fixed for the hearing of objections. There is no evidence that a date was thereafter fixed, but there is reason why the matter did not advance to the hearing of objections. And the reason is because there were in fact, no objections to begin with.

[132] From our reading of s 11, the scheme of the statutory provisions is that (per s 11(2)), the owner/occupier is first notified (via the First Schedule Notice) of the respondent's intention to enter on the land to perform the acts specified in the statutory notice. In this regard, it is important in the present context to note that s 11(2) explicitly states that '...The notice *shall be substantially in the form set out in the First Schedule and the District Land Administrator shall specify a date upon which the State Authority shall inquire into any objection* that may have been made as hereinafter provided'.

[133] The issue here is that the First Schedule Notice did not specify a date for the hearing of objection. Following the decision of the High Court in *SPK*

v TNB it was contended for the appellant that the omission to state a date in the First Schedule Notice is fatal and that the respondent's entry on the land is accordingly unlawful and constituted a trespass in 2005 and is still continuing to-date.

[134] In the context of the issue of specifying a date for the hearing of any objections, it is apposite to note that s 11(4) entitles the owner/occupier to lodge an objection with the PTD, within 14 days of receipt of the notice and such objection may be given in writing or even verbally.

[135] If there is no objection, then s 11(5) entitles the respondent to forthwith enter on the land and do all the acts as specified in the notice. If an objection is lodged, then pursuant to s 11(6), the PTD shall hold an inquiry to hear the objections.

[136] In the present case, there is no evidence of any objection by Mdm Chan or by the administrators of the estate of the deceased in relation to the First Schedule Notice. Since there were no objections, there is no question of the PTD holding any inquiry to hear any objections, because those who could lawfully object, to wit, Mdm Chan and/or the administrators of the estate of the deceased, did not object. In our view, the case of *SPK v TNB* was predicated on a host of other issues.

[137] In that case, the landowner at the time of issuance of the First Schedule Notice was Noble Idea. The High Court found that in purported compliance with s 11(2), TNB issued the First Schedule Notice to one 'Wong Chiu Yiu, c/o 86, Taman Sri Langat, Jalan Reko, 43000 Kajang'. The First Schedule Notice was then served on one Ng Ah Boon. The compensation sum was also paid to Ng Ah Boon. At the trial, TNB could not muster a credible or any explanation as to why the First Schedule Notice was issued in the name of Wong Chiu Yiu and thereafter served on Ng Ah Boon and why the compensation sum was paid to Ng Ah Boon. TNB's only response was that the registered owner, Noble Idea did not object.

[138] No doubt, in *SPK v TNB*, the learned judge in that case did rule that the failure to specify a date in the First Schedule Notice is fatal. However, we do not agree with the appellant's contention that the failure to specify a date in the First Schedule Notice ipso facto nullifies the said notice.

[139] As stated earlier, the parties who have the locus standi to object in regards to any purported infirmity in the First Schedule Notice are Mdm Chan and/or the administrators of the estate of the deceased. The right to object is not available to a subsequent purchaser, who takes the land subject to the actions taken by the respondent as per s 11. Thus, if the First Schedule Notice

has been served on the proper party and at the proper address, then it is only the landowner at the material time who can object under s 11(4). As opined earlier, in the absence of any evidence that there were objections by either Mdm Chan and/or the administrators in relation to the First Schedule Notice, the mere fact that the First Schedule Notice had stated that the objection hearing will be on a date 'to be fixed' ('suatu tarikh kemudian') is not of itself fatal, especially when all the attendant circumstances are considered.

[140] And the circumstances that are relevant in this regard are, first, the absence of any objection from those who could (but did not) object and secondly, the unconditional participation by Mr Subas (on behalf of the estate of the deceased) at the inquiry on 20 April 2004, which clearly or implicitly establishes that there was no objection to the First Schedule Notice and/or to the respondent's exercise of their right under s 11(5) and the entry on the land and erection of pylons cables thereupon.

[141] The only issue which the estate of the deceased was concerned about, if at all, was with regard to the compensation payable for the respondent's entry and use of the land. Subsequently, the appellant came on board and they in turn took the position that the compensation sum ought to be paid to them and that Mr Subas has no right to receive the compensation sum on behalf of the estate of the deceased.

[142] According to counsel for the respondent, the compensation sum is still with the respondent and that they are ready to make payment, if so ordered. Thus, it is not a case of the respondent abdicating their responsibility or avoiding legal liability to pay the compensation sum for their entry and use of the land, which subsequently became owned by the appellant. The delay in payment was because the issue as to whom the compensation sum should be paid had not been resolved. After the initial correspondence the matter went cold and there was inertia for several years until the writ was filed on 15 December 2017. Thus the appellant's argument that the respondent has deprived them of their land and has not paid compensation contrary to art 13 of the Federal Constitution, is misplaced and is untenable.

[143] In so far as the complaint with regard to the locus standi of Mr Subas to attend the inquiry on 20 April 2004 is concerned, we are of the view that the mere fact that the land was not listed in the Schedule to the LA, does not deprive Mr Subas, the lawful co-administrator of his locus standi to act on behalf of the estate. We are inclined to the view that based on the Court of Appeal's decision in *Tay Choo Foo*, a supplementary schedule can always be attached upon discovery of any item not scheduled therein.

[144] At any rate, the same case had enunciated that, 'the schedule of

property to the grant of letters of administration did not in law affect the title of the personal representative of a deceased person to institute legal proceedings ...'. As such, it was erroneous for the learned judge in this case to have relied upon the case of *Ong Bee Yam.* We therefore disagree with the learned judge's ruling that the compensation order was null and void.

[145] In any event, if a beneficiary of the estate of a deceased who died intestate, can take steps to protect the assets of the estate, albeit, without the LA (per Federal Court in *Al Rashidy Kassim & Ors v Rosman Roslan* then, a fortiori, in the present case, Mr Subas as co-administrator had the requisite locus standi to attend the inquiry on 20 April 2004, to protect the interest of the estate vis a vis the compensation sum.

[146] Finally, it is indisputable that at all times, despite having knowledge of the respondent's entry on the land and that pylon cables had been erected thereon, the appellant's position was that the compensation sum should be paid to them as the subsequent purchaser of the land and that it should not be paid to Mr Subas (on behalf of the state of the estate of the deceased).

[147] It is material to note that from the time that the appellant became the registered owner of the land on 20 December 2005 until the writ was filed on 15 December 2017, the appellant never complained of any trespass or for that matter, any continuing trespass.

[148] In the result, having regard to all the circumstances, we are of the view that the absence of a specific date for the hearing of objections in the First Schedule Notice, per se, is not fatal. And this is particularly so since it was mentioned therein that a date will be fixed in due course and also given that ultimately there were in fact no objections from either Mdm Chan or the administrators of the estate of the deceased.

[149] Thus, the absence of any objection obviated the need for any hearing of objection. We are of the view that service of the First Schedule Notice on Mdm Chan was good service. Further, we are impelled to the view that:

(a) any objection in relation to the intention of the respondent to enter the land and to erect the pylon cables and/or in relation to the First Schedule Notice can only be raised by the owner/occupier at the material time when the notice was issued and served;

(b) Mr Subas as the lawful co-administrator of the estate of the deceased had the requisite locus standi to attend the inquiry on 20 April 2004;

(c) the appellant is estopped from complaining of any alleged trespass or continuing trespass;

(d) in any event, there was in fact no trespass on the land as the respondent's entry on the land and erection of the pylon cables was done in accordance with s 11; and

(e) the First Schedule Notice and the compensation order are both valid and binding on all parties, including the appellant as the subsequent purchaser of the land.

[150] For these principal reasons, we are of the unanimous view that the decision of the learned judge was not plainly wrong. The appeal is therefore dismissed with costs of RM10,000 subject to allocatur.

Order accordingly.

Appeal dismissed with costs of RM10,000.

Reported by Nabilah Syahida Abdullah Salleh